

# Appendix Two

**In The Matter Of:**  
*Tricia Wachsmuth v.*  
*City of Powel, et al.*

---

*Mike Chretien*  
*October 05, 2010*

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*Bray Reporting*  
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MIKE CHRETIEN - October 5, 2010 Page 1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF WYOMING  
3 -----  
4 TRICIA WACHSMUTH, )  
5 Plaintiff, )  
6 vs. ) NO. 10-CV-041J  
7 )  
8 CITY OF POWELL, AND IN THEIR )  
9 INDIVIDUAL CAPACITY, TIM )  
10 FEATHERS, CHAD MINER, MIKE )  
11 CHRETIEN, ROY ECKERDT, DAVE )  
12 BROWN, MIKE HALL, BRETT LARA, )  
13 MATT MCCASLIN, ALAN KENT, MATT )  
14 DANZER, OFFICER BRILAKIS, LEE )  
15 BLACKMORE, CODY BRADLEY, KIRK )  
16 CHAPMAN, JOHN DOES #1-#4, )  
17 Defendants. )  
18  
19 DEPOSITION OF MIKE CHRETIEN  
20 9:09 a.m., Tuesday, October 5, 2010  
21  
22 Pursuant to notice, the deposition of MIKE  
23 CHRETIEN was taken in behalf of Plaintiff in accordance  
24 with the applicable Federal Rules of Civil Procedure at  
25 270 North Clark, Powell, Wyoming, before Vonni R. Bray,  
Registered Professional Reporter and Notary Public of  
the State of Montana.

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Also Present: Tim Feathers

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Direct Examination by Mr. Gosman  
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1 MIKE CHRETIEN,  
2 having been first duly sworn, testified as follows:  
3 DIRECT EXAMINATION  
4 BY MR. GOSMAN:  
5 Q. Officer Chretien, have you ever given a  
6 deposition before?  
7 A. No, sir.  
8 Q. And you participated in a couple of  
9 depositions in the last day?  
10 A. Yes.  
11 Q. So you're familiar with the process for  
12 conducting a deposition, correct?  
13 A. Yes.  
14 Q. I'm going to go ahead and review those with  
15 you again.  
16 You do understand that you're under oath  
17 today?  
18 A. Yes.  
19 Q. And your answers can be recorded -- or are  
20 being recorded and can be used against you at trial?  
21 A. Yes.  
22 Q. That makes it important for you to ask for  
23 clarification if you have any trouble with my  
24 questions, do you understand?  
25 A. I understand.

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1 Q. Okay. And again, we all seem to have a  
2 little trouble with finishing our questions before the  
3 answer begins, and I will as well. So we both got to  
4 kind of cooperate on that end of it?  
5 A. Okay.  
6 Q. If you need to take a break at any time, we  
7 will do so.  
8 A. Okay.  
9 Q. However, if a question is pending, you will  
10 be required to answer the question before the break  
11 begins.  
12 A. I understand.  
13 Q. What is your full name?  
14 A. Michael George Chretien.  
15 Q. And your current address, Officer?  
16 A. 250 North Clark Street, Powell, Wyoming.  
17 Q. Your occupation?  
18 A. Police officer.  
19 Q. And what is your rank with the Powell Police  
20 Department?  
21 A. Sergeant.  
22 Q. Could you give me a brief overview of the  
23 chain of command of the Powell Police Department  
24 starting with Chief Feathers?  
25 A. There's Chief Feathers, and then the three

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Direct Examination by Mr. Gosman  
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1 sergeants, of which I'm one.  
2 Q. So the sergeants report directly to Chief  
3 Feathers?  
4 A. Yes.  
5 Q. Are you in a supervisory capacity of the  
6 patrol officers?  
7 A. Yes.  
8 Q. Are you in a supervisory capacity over all  
9 the patrol officers or just a certain group that are in  
10 the investigation unit?  
11 A. I'm not sure I understand.  
12 Q. Do you supervise a specific group of  
13 employees or police officers?  
14 A. Yes.  
15 Q. Which ones are they?  
16 A. It changes from year to year.  
17 Q. Okay. Do you share supervisory  
18 responsibility with the other sergeants over the same  
19 employee?  
20 A. Not generally.  
21 Q. 2009, who were you responsible for in a  
22 supervisory capacity?  
23 A. Anna Paris, Kirk Chapman, Kevin Schmidt,  
24 Matthew Danzer.  
25 Q. Okay. And let's go ahead and visit for just

MIKE CHRETIEN - October 5, 2010  
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1 a minute about the other sergeants and who they were  
2 responsible for, to the best of your knowledge.  
3 A. I don't remember exactly who they had on  
4 their squads.  
5 Q. That's fine. Are you currently on any  
6 medication that would impair your ability to give  
7 truthful answers here today?  
8 A. No.  
9 Q. Do you have any medical problems or illnesses  
10 that might interfere with your ability to give truthful  
11 answers to this deposition?  
12 A. No.  
13 Q. Have you ever been arrested for any crime,  
14 other than a traffic violation?  
15 A. No.  
16 Q. Have you ever been accused of a crime  
17 involving dishonesty?  
18 A. No.  
19 Q. Are you married?  
20 MS. WESTBY: Do you have a specific reason?  
21 You asked about divorce and restraining orders  
22 yesterday. I guess, I'm --  
23 MR. GOSMAN: Yes, I'm trying to get some  
24 background on the officers.  
25 MS. WESTBY: For what reason?

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Direct Examination by Mr. Gosman

1 MR. GOSMAN: This is an excessive force case,  
2 and if an officer has had a restraining order against  
3 him, I think that's significant. I don't know if  
4 anyone else would agree with that, but I do. It's  
5 background information.  
6 MS. WESTBY: Okay. Then let's go with that.  
7 MR. GOSMAN: Let's go with what?  
8 MS. WESTBY: Well, I mean, does personal life  
9 have any relevance to anything in this case?  
10 MR. GOSMAN: It may have, yes.  
11 MS. WESTBY: How so?  
12 MR. GOSMAN: Well, I know that I'm entitled  
13 to get information on personal life. And it's not  
14 something you want to bring up with the Magistrate, so  
15 this is just going to be a couple of questions, and  
16 we'll be on with it.  
17 THE WITNESS: Yes  
18 BY MR. GOSMAN:  
19 Q. And you have a family, Officer Chretien?  
20 A. Yes.  
21 Q. Have you ever been divorced?  
22 A. No.  
23 Q. Do you have any children the age of Bret  
24 Wachsmuth or Josh Bessler?  
25 A. No.

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Direct Examination by Mr. Gosman

1 Q. Have you ever had a restraining order placed  
2 against you?  
3 A. No.  
4 Q. All right. Let's go ahead and move on to  
5 your educational background.  
6 Where did you go to high school, Officer  
7 Chretien?  
8 A. Stockbridge, Georgia.  
9 Q. And did you graduate from high school there?  
10 A. Yes.  
11 Q. And what year was that?  
12 A. 1991.  
13 Q. And have you had any education or schooling  
14 beyond high school?  
15 A. Yes.  
16 Q. Would you describe your education beyond high  
17 school?  
18 A. I attended Georgia Military College in  
19 Milledgeville, Georgia.  
20 Q. And how long were you there?  
21 A. Two years.  
22 Q. Did you receive a degree?  
23 A. I did.  
24 Q. And what was that degree in?  
25 A. Associate's in general studies.

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Direct Examination by Mr. Gosman

1 Q. What year was that that you received that  
2 degree?  
3 A. 1993.  
4 Q. And then did you continue with your education  
5 after that?  
6 A. Yes.  
7 Q. And where did you go, and tell me about your  
8 next schooling experience.  
9 A. Georgia Southwestern college.  
10 Q. And how long were you there?  
11 A. Two years.  
12 Q. And did you obtain a degree there?  
13 A. Yes.  
14 Q. And I assume these are associate degrees,  
15 correct?  
16 A. No.  
17 Q. Okay. Let's go back to the degree you  
18 obtained at the military college. What kind of degree  
19 was that?  
20 A. That was an associate's degree.  
21 Q. Okay. And then you went on to another school  
22 for two years?  
23 A. Yes.  
24 Q. And I'm sorry. What was the name of that  
25 school again?

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Direct Examination by Mr. Gosman

1 A. Georgia Southwestern college.  
2 Q. Okay. That was a four-year college?  
3 A. Yes, sir.  
4 Q. And you obtained a degree from that school?  
5 A. I did.  
6 Q. And what was that degree in?  
7 A. History.  
8 Q. What year did you graduate from that school?  
9 A. 1995.  
10 Q. When was it that you decided to get into law  
11 enforcement?  
12 A. 2002.  
13 Q. Okay. From 1995 to 2002, why don't you tell  
14 me what you did.  
15 A. I was on active duty as an infantry officer  
16 in the Army from '95 to 2000.  
17 Q. Were you deployed overseas?  
18 A. No.  
19 Q. What branch of the service?  
20 A. The Army.  
21 Q. You said that. Thank you. All right.  
22 What -- I assume that you were honorably  
23 discharged; is that correct?  
24 A. Yes.  
25 Q. And when you got out of the Army -- in 2002,

<p>MIKE CHRETIEN - October 5, 2010 Direct Examination by Mr. Gosman</p> <p>Page 13</p> <p>1 was it? Did you say? 2 A. 2000. 3 Q. What did you do for the next couple of years? 4 A. For one year I worked at a steel mill in 5 Louisiana. 6 Q. And your next job was with law enforcement? 7 A. No. My next job was with Taco Bell in 8 Macedonia, Georgia. 9 Q. Okay. You began your law enforcement career 10 in 2002? 11 A. Yes. 12 Q. Tell me about that. 13 A. I applied for a job with the city of College 14 Park, and I was selected. 15 Q. And did they put you through the law 16 enforcement academy? 17 A. Yes. 18 Q. And what -- at what time did you finish your 19 requirements at the law enforcement academy? 20 A. I don't remember the date. It would have 21 been the fall of 2002. 22 Q. And did you begin serving as a police officer 23 in the fall of 2002? 24 A. I started my field training after the 25 academy.</p>	<p>MIKE CHRETIEN - October 5, 2010 Direct Examination by Mr. Gosman</p> <p>Page 15</p> <p>1 A. I think they issued a temporary certification 2 as soon as I was hired that was good for a year. 3 Within that year's time, I completed the challenge 4 course at the law enforcement academy and got my full 5 certification around the spring. 6 Q. Spring of -- 2008? 7 A. Yes. 8 Q. Did you have to take courses in order to 9 complete the challenge requirements? 10 A. They were courses at the law enforcement 11 academy. 12 Q. So you completed a session at the law 13 enforcement academy? 14 A. Yes. 15 Q. And approximately how many hours were 16 involved in that, hours of training? 17 A. I believe it was 80. 18 Q. Were you hired as a sergeant for the Powell 19 Police Department? 20 A. I was. 21 Q. And did you begin immediately to assume 22 supervisory duties once you completed your probationary 23 term? 24 A. At some point in my field training, I started 25 over as a probationary sergeant. I did field training</p>
<p>MIKE CHRETIEN - October 5, 2010 Direct Examination by Mr. Gosman</p> <p>Page 14</p> <p>1 Q. And when did you complete your field 2 training? 3 A. Christmas Eve, 2002. 4 Q. And did you have any problems during your 5 probationary period with College Park Police 6 Department? 7 A. No. 8 Q. How long did you work for the College Park 9 Police Department? 10 A. From June of 2002 until August of 2007. 11 Q. And where did you go when you left the 12 College Park Police Department? 13 A. Powell Police Department. 14 Q. What was your rank when you left the College 15 Park Police Department? 16 A. Sergeant. 17 Q. Did you complete a probationary program at 18 the Powell Police Department? 19 A. Yes. 20 Q. And what year did you complete that program? 21 A. 2008. 22 Q. And were you certified as a Wyoming police 23 officer sometime during that period? 24 A. Yes. 25 Q. And approximately when was that?</p>	<p>MIKE CHRETIEN - October 5, 2010 Direct Examination by Mr. Gosman</p> <p>Page 16</p> <p>1 just like everyone else. 2 Q. Okay. 3 A. Initially. 4 Q. When did you achieve the rank of sergeant 5 with the Powell Police Department, then? 6 A. I don't remember the exact date. 7 Q. That's okay. Just give me a rough idea. 8 A. Winter. 9 Q. Winter of 2009? 10 A. '7. 11 Q. Okay. Have you ever had any claims filed 12 against you involving discipline that are not in your 13 personnel file? 14 MS. WESTBY: I'm sorry. Say that again. 15 MR. GOSMAN: I'll ask the reporter to repeat 16 it. 17 MS. WESTBY: Okay. Well, do you want the 18 reporter to read the Judge's question? 19 MR. GOSMAN: Actually, I'm fine with that. 20 As a matter of fact, that's just fine. 21 MR. THOMPSON: And I have it verbatim, too. 22 MR. GOSMAN: Okay. 23 MR. THOMPSON: Have you ever received any 24 kind of disciplinary action that is not reflected in 25 your personnel records?</p>

<p>MIKE CHRETIEN - October 5, 2010                      Direct Examination by Mr. Gosman</p> <p>1 MR. GOSMAN: Okay. That's fine. Let's ask                      2 that question.                      3 BY MR. GOSMAN:                      4 Q. Officer, can you answer that question?                      5 A. At the Powell Police Department?                      6 Q. Yes.                      7 A. No, I have not.                      8 Q. You've never been brought in and reprimanded                      9 for any action as a Powell police officer?                      10 A. No.                      11 (Exhibit 1 identified)                      12 BY MR. GOSMAN:                      13 Q. Let me ask you to turn to Exhibit 1 in your                      14 exhibit notebook, sir. That, I believe, are the                      15 P.O.S.T. training records, both within the State of                      16 Wyoming and from your previous training in Georgia.                      17 Would you take a look at those and tell me if                      18 that is a complete record of your P.O.S.T. training?                      19 A. Up until February of 2009, yes.                      20 Q. Okay. Let's go ahead and take a look at your                      21 Georgia P.O.S.T. training records, which are on Page 2.                      22 Can you tell me what the "intermediate certified"                      23 means? It's displayed under the heading "Officer                      24 Certifications".                      25 A. I don't recall the exact requirements. But</p>	<p>MIKE CHRETIEN - October 5, 2010                      Direct Examination by Mr. Gosman</p> <p>1 Q. How about certification for deployment of                      2 flashbang devices?                      3 A. No.                      4 Q. When you say that Georgia doesn't have                      5 certification, does that mean Georgia doesn't require a                      6 certification?                      7 A. I don't know.                      8 Q. Okay. Certainly you can take courses and                      9 qualify as a certified -- or as certified in a given                      10 area, such as the deployment of flashbang devices,                      11 wouldn't you agree with that?                      12 MR. THOMPSON: Objection as to form.                      13 THE WITNESS: Repeat the question.                      14 BY MR. GOSMAN:                      15 Q. Do you understand you can be trained and                      16 certified in the area of deployment of flashbang                      17 devices?                      18 A. Not to my knowledge by a P.O.S.T.                      19 Q. How about Wyoming, do you know anything about                      20 what Wyoming recognizes?                      21 A. Not to my knowledge.                      22 Q. So in other words, Wyoming wouldn't have a                      23 certification -- if you applied for training                      24 recognition under the Wyoming P.O.S.T. requirements,                      25 they would not recognize a certification for flashbang</p>
<p>MIKE CHRETIEN - October 5, 2010                      Direct Examination by Mr. Gosman</p> <p>1 in order to obtain an intermediate certification                      2 through the Georgia Peace Officer Standards and                      3 Training Council, you had to have a certain number of                      4 college credit hours, certain number of years'                      5 experience. And then there was a specific list of                      6 courses that were required.                      7 They are listed in my P.O.S.T. profile. I                      8 just don't recall what that specific list was. It was                      9 maybe five or six courses.                      10 Q. And those courses are reflected in your                      11 P.O.S.T. training records; is that correct?                      12 A. Yes.                      13 Q. And I see that you have two certifications.                      14 What are those certifications?                      15 A. I'm not sure which ones you're referring to.                      16 Q. Oh, it says "Instructor Certifications."                      17 It's the Document No. 2.                      18 A. Okay. General and firearms.                      19 Q. Okay. Did you have a certification in SWAT                      20 training?                      21 A. There is no Georgia P.O.S.T. certification                      22 for SWAT training.                      23 Q. Okay. Does the Georgia P.O.S.T. have a                      24 certification for specially trained units?                      25 A. No.</p>	<p>MIKE CHRETIEN - October 5, 2010                      Direct Examination by Mr. Gosman</p> <p>1 devices, as far as you know?                      2 A. There's a difference between certification                      3 and recognizing training.                      4 Q. All right. Go ahead and clear that up for                      5 me.                      6 A. I would say that both Georgia and Wyoming                      7 would recognize training in the devices. However, I'm                      8 not aware that either state issues any certifications.                      9 Q. All right. Under the heading                      10 "Investigations" on that page that we're looking at, it                      11 indicates there were no cases in the file. What does                      12 that mean, do you know?                      13 A. Yes.                      14 Q. What does it mean?                      15 A. If you were involved in some sort of                      16 incident, it could be Internal Affairs, it could be a                      17 complaint directly to P.O.S.T., it could be a                      18 termination with cause, things of that nature, that's                      19 where a P.O.S.T. investigator would be assigned to look                      20 into the officer to determine whether or not they                      21 should retain that certification as a peace officer in                      22 Georgia.                      23 Q. It appears that you have had SWAT training;                      24 is that correct?                      25 A. Yes.</p>

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Direct Examination by Mr. Gosman

1 Q. And let's go ahead and review the SWAT  
2 training that you had. And we'll start with the last  
3 year first. That was in 2007; is that correct?  
4 A. That was SWAT training by the name "SWAT  
5 Training," yes.  
6 Q. Okay. Who picks the names? Do you know?  
7 A. I don't.  
8 Q. All right. How many hours of SWAT training  
9 did you have in 2007?  
10 A. That's reflected on my P.O.S.T. profile --  
11 can I write on this?  
12 Q. Yes, you can. That's not even going to go  
13 into the record.  
14 A. Eighty hours are reflected on my P.O.S.T.  
15 profile.  
16 Q. Okay. And go ahead and do the same thing for  
17 the year 2006, and we're going to go all the way back  
18 to 2002. And we're going to add them all up, too.  
19 Just to let you know that.  
20 A. Well, I want to correct 2007, there's one  
21 two-hour course that was SWAT training, but it's titled  
22 something else; is that okay?  
23 Q. That's fine. What course is that?  
24 A. Submachine gun.  
25 Q. Okay.

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Direct Examination by Mr. Gosman

1 A. That would make the total for 2007 82 hours  
2 on my P.O.S.T. profile. Looks like 80 hours for 2006.  
3 116 hours for 2005.  
4 Q. Did you say 187?  
5 A. 116 for 2005. And I don't see any past that,  
6 no.  
7 Q. Okay. Roughly 280 hours during those years?  
8 A. Roughly.  
9 Q. Is that correct?  
10 A. Yes.  
11 (Exhibit 2 identified)  
12 BY MR. GOSMAN:  
13 Q. Let's go ahead and turn to Exhibit No. 2, and  
14 was this your first SWAT training course; is the  
15 document represented there part of your first SWAT  
16 training course?  
17 A. This was the first SWAT training class that I  
18 attended as a student.  
19 Q. All right. And would that have been in the  
20 year -- was it 2005, did we decide?  
21 A. Yes.  
22 Q. Okay. I notice that we have the first page,  
23 and the table of contents, but we don't have any other  
24 documents relative to that training.  
25 A. Uh-huh.

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Direct Examination by Mr. Gosman

1 Q. I also notice, Officer, that it appears, at  
2 least, that you were taking a picture of -- this was  
3 being copied.  
4 A. Uh-huh.  
5 Q. And it was -- well, I can't say that about  
6 this particular document.  
7 Let me just ask this question: Where are the  
8 rest of these training materials?  
9 A. This book is a book about as thick as the  
10 binder that you got here.  
11 Q. Okay.  
12 A. The course didn't have an outline, per se.  
13 It was a bunch of different articles that they put  
14 together.  
15 Q. I see. Okay.  
16 A. I just didn't think.  
17 Q. All right.  
18 A. I mean, you're welcome to look at it, if you  
19 want I can get it.  
20 Q. I'm not sure I want to copy it, but I think I  
21 will want to look at it. Can we make an arrangement to  
22 get that before the end of the week?  
23 A. I can get that for you first break.  
24 Q. Okay. Very good. Thank you.  
25 All right. Why don't we go ahead and review

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Direct Examination by Mr. Gosman

1 the course syllabus and talk about what it was that you  
2 learned as a basic SWAT officer.  
3 A. Okay.  
4 Q. That's Exhibit 2. I notice that this was a  
5 multi-day course, four days it looks like, a five-day  
6 course. "Introduction to SWAT and SWAT Theory." It  
7 talks about SWAT team mission and composition.  
8 What can you tell me about SWAT team mission  
9 and SWAT composition, Officer?  
10 MS. WESTBY: I'm going to object to the form  
11 of the question.  
12 Go ahead.  
13 THE WITNESS: Okay. The SWAT teams primarily  
14 handle two specific missions.  
15 BY MR. GOSMAN:  
16 Q. Okay. What are they?  
17 A. Hostage rescue and barricaded gunman.  
18 Q. They also perform high-risk warrant service?  
19 A. As do all officers.  
20 Q. Well -- okay. But I mean, SWAT teams perform  
21 high-risk warrant service, correct?  
22 A. They do.  
23 Q. Okay. And what is the theory behind the SWAT  
24 team? What's the difference between the SWAT team and  
25 all officers, for instance, handling these kinds of

MIKE CHRETIEN - October 5, 2010 Page 25  
Direct Examination by Mr. Gosman

1 situations?

2 A. I'm not sure I understand.

3 MR. THOMPSON: Objection as to form, as to

4 all these. Vague.

5 MS. WESTBY: Same.

6 BY MR. GOSMAN:

7 Q. You mentioned high - I mentioned high-risk

8 warrant service. And you indicated all officers

9 participate in high-risk warrant service.

10 A. Correct, that's a requirement for advanced

11 certification in Georgia. That particular class,

12 called high-risk warrant service that every officer

13 attends.

14 Q. Every officer?

15 A. Every officer that wants to obtain the

16 advanced certification.

17 Q. Did you obtain your advanced certification in

18 Georgia?

19 A. No.

20 Q. All right. So back to my question. What is

21 the difference between the philosophy and the training

22 for a SWAT team, and having officers on the street

23 perform high-risk warrant service?

24 A. They would do it the same. The only

25 difference is that one is assigned to a special unit.

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Direct Examination by Mr. Gosman

1 Q. Isn't that group trained, specially trained?

2 A. They would receive the same type of training

3 that the other officers would.

4 Q. And do they have special training

5 requirements, the SWAT team?

6 A. I think that depends on the agency.

7 Q. Well, based on what you know. Let's just use

8 College Park as an example

9 A. In College Park, we did have specific

10 requirements.

11 Q. Do you know whether there are standard --

12 standards throughout the country regarding the training

13 and use of SWAT teams?

14 A. There's the NTOA Best Practices.

15 Q. Okay. As far as you know, did College Park

16 try to use and follow the NTOA Best Practices?

17 A. We tried to.

18 Q. And so what were the training requirements

19 for your serving on a SWAT team in College Park,

20 Georgia?

21 A. To maintain our weapons proficiency average

22 of 90 percent or better.

23 Q. Okay. And did the team have in-service

24 training during the course of the year, other than

25 firearms proficiency?

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1 A. Yes.

2 Q. Okay. And did you cover elements such as

3 dynamic entry?

4 A. Yes.

5 Q. And did you cover elements such as room

6 clearing?

7 A. Yes.

8 Q. Use of flashbang devices?

9 A. Yes.

10 Q. Entry into the premises?

11 A. Yes.

12 Q. And did you practice as a team?

13 A. Yes.

14 Q. And did you do this every year?

15 A. Yes.

16 Q. And how often did you do it during the course

17 of the year?

18 A. We tried to do it at least twice a month.

19 Q. Did you have to be -- could any member of the

20 College Park Police Department just walk in and serve

21 on the SWAT team?

22 A. They all had the opportunity.

23 Q. All right. They had to meet training

24 requirements though, correct?

25 A. Yes.

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1 Q. And did you have officers that from time to

2 time were dropped from the SWAT team?

3 A. Yes.

4 Q. For one issue or another?

5 A. Yes.

6 Q. What were the standards that allowed the SWAT

7 commander to drop members?

8 A. Physical fitness standards and a firearms

9 standard.

10 Q. Okay. Other training issues that could have

11 been used to eliminate team members, substandard

12 performance in any of the other training areas?

13 A. Those are the only two that we used when I

14 was there.

15 (Exhibit 4 identified)

16 BY MR. GOSMAN:

17 Q. All right. Well, go ahead and take a look

18 here at some of your other materials. Let's look at

19 Exhibit No. -- I think we'll jump ahead to Exhibit

20 No. 4. What is that document?

21 A. There's nothing between the 4 and 5 in my

22 book.

23 Q. So you don't have an Exhibit 4?

24 A. No.

25 Q. Okay. Well, I'm going to bring my computer

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1 over, and I'm going to show you a document and ask you  
 2 if you can identify it.  
 3 A. It might be that something is just not in the  
 4 right place.  
 5 Q. It's very possible.  
 6 A. Yes.  
 7 Q. Do you recognize that document?  
 8 A. I do.  
 9 Q. Go ahead and tell me what it is?  
 10 A. SWAT Supervision & Command Decision-Making  
 11 Training.  
 12 Q. Do you have that manual?  
 13 A. Yes.  
 14 Q. Will you bring that?  
 15 A. I will.  
 16 MR. THOMPSON: Counsel, for the record, can  
 17 we identify that so that we --  
 18 MR. GOSMAN: Yes.  
 19 MR. THOMPSON: At least by Bates number?  
 20 MR. GOSMAN: Twenty-five, 26, 27. That's  
 21 Chretien Training.  
 22 (Exhibit 5 identified)  
 23 BY MR. GOSMAN:  
 24 Q. Okay. And let's go ahead and take a look at  
 25 Exhibit 5. We'll hope it's there.

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1 By the way, did you find Exhibit 4?  
 2 A. I did.  
 3 Q. Okay. Where was it?  
 4 A. In three.  
 5 Q. Okay. We'll take care of that in a minute.  
 6 A. You want me to look at five?  
 7 Q. Yes. What is that?  
 8 A. National Tactical Officers Association, High  
 9 Risk Warrant Service.  
 10 Q. Training manual?  
 11 A. It's part of that command decision-making  
 12 training book.  
 13 Q. Okay. And that's the book that you're going  
 14 to bring this afternoon?  
 15 A. Yes.  
 16 Q. As a matter of fact, is there any way you  
 17 could bring that book before lunch?  
 18 A. I can, again, bring it at the first break.  
 19 (Exhibit 3 identified)  
 20 Q. Very good. All right. Let's go back to  
 21 Exhibit 3. I'll ask you to describe that for me,  
 22 please.  
 23 A. National Tactical Officers Association  
 24 Mechanical Breaching Introduction.  
 25 Q. Okay. And are you a member of the NTOA?

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1 A. No.  
 2 Q. Were you?  
 3 A. We had a team membership at one time.  
 4 Q. And you took this course in 2005?  
 5 A. I did.  
 6 Q. And was this your first training in  
 7 mechanical and shotgun breaching?  
 8 A. This would have been my first formal training  
 9 class.  
 10 Q. Was this your first formal training class  
 11 relative to your SWAT training?  
 12 A. Yes.  
 13 Q. So at the time you engaged in your first  
 14 formal SWAT training program, you covered, among other  
 15 things, I assume, the field of mechanical and shotgun  
 16 breaching, correct?  
 17 A. Yes.  
 18 Q. And is that part of the basic SWAT policeman  
 19 training?  
 20 A. It was also part of the basic program that I  
 21 took.  
 22 Q. I'm sorry. I just didn't really understand  
 23 where you're going with that answer. Why don't you go  
 24 ahead and clear it up for me.  
 25 A. This was a specific class on mechanical and

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1 shotgun breaching.  
 2 Q. And it was part of your SWAT training,  
 3 correct? Yes or no?  
 4 A. I wasn't on the SWAT team at the time that I  
 5 attended.  
 6 Q. Did you take this course in connection with  
 7 meeting the training requirements for performance on  
 8 the SWAT team?  
 9 A. There was no requirement of me to take this  
 10 training.  
 11 Q. There wasn't. Okay. All right. Did you --  
 12 let me ask this question: Did your SWAT team require  
 13 training in the area of a mechanical and shotgun  
 14 breaching?  
 15 A. We didn't require that somebody attend this  
 16 formal training, no.  
 17 Q. All right. Did they require training in the  
 18 field of mechanical and shotgun breaching?  
 19 A. Mechanical breaching.  
 20 Q. Okay. To serve on your SWAT team, correct?  
 21 A. Officers were trained in mechanical breaching  
 22 that were assigned to the SWAT team.  
 23 Q. Well, could you be an officer on the SWAT  
 24 team without having training in mechanical breaching?  
 25 A. You might.

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1 Q. You might?  
 2 A. You might.  
 3 Q. Okay. You might have a specific assignment  
 4 as -- on the SWAT team that didn't involve mechanical  
 5 breaching, correct?  
 6 A. Correct.  
 7 Q. Is that what you're talking about?  
 8 A. No.  
 9 Q. All right. Go ahead and tell me what you're  
 10 talking about when you say you might have had it?  
 11 A. You might try out for the SWAT team and make  
 12 it.  
 13 Q. Without taking the mechanical breaching  
 14 course?  
 15 A. Without taking any course.  
 16 Q. Without taking any course. Okay.  
 17 And once you made the SWAT team, then you  
 18 were required to engage in the training program that  
 19 the SWAT team engaged in '  
 20 A. That's correct.  
 21 Q. And I think we decided that that involved, at  
 22 least at College Park, training twice a month?  
 23 A. Yes.  
 24 Q. In all areas of dynamic entry and SWAT team  
 25 tactics, correct?

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1 A. At one point or another during the year. It  
 2 didn't cover everything every month.  
 3 Q. Fair enough. Did the SWAT team -- other than  
 4 the practical training exercises, did the SWAT team  
 5 meet and train together in other contexts?  
 6 A. Aside from our monthly training?  
 7 Q. Yes.  
 8 A. No.  
 9 Q. Okay. You did take this course, Exhibit 3,  
 10 correct?  
 11 A. Yes.  
 12 Q. And part of these materials, these course  
 13 materials, describe the mechanical and shotgun  
 14 breaching team, do they not?  
 15 A. I'd have to look at it.  
 16 Q. Let's go ahead and do that. It's probably on  
 17 that first page.  
 18 A. There's a definition of breach.  
 19 Q. Okay.  
 20 A. Safety protocol for this course.  
 21 Q. Okay.  
 22 A. I don't see --  
 23 Q. "The purpose of the breaching team is to  
 24 provide a safe and swift egress of the tactical team  
 25 members through any obstacle or environment," do you

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1 see that?  
 2 A. No, I don't. What page are you on?  
 3 Q. Let's see here. That would be Document  
 4 No. -- it's Page 4, Document No. 16?  
 5 A. Okay.  
 6 Q. The breaching team.  
 7 A. Okay.  
 8 Q. Okay. How many members are on a typical  
 9 breaching team?  
 10 A. I don't know.  
 11 Q. Well, in your experience, how many members  
 12 were on the breaching team in the College Park SWAT  
 13 team?  
 14 A. It would depend on the situation.  
 15 Q. Okay. Go ahead and explain that.  
 16 A. It would depend on the situation.  
 17 Q. What situations?  
 18 A. What situation the SWAT team was faced with.  
 19 Q. Well, I certainly can understand that,  
 20 Officer. I'm asking you for what situations, be  
 21 specific?  
 22 MR. THOMPSON: Objection as to form.  
 23 MS. WESTBY: Join.  
 24 THE WITNESS: I can't be. I participated in  
 25 I don't know how many.

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1 BY MR. GOSMAN:  
 2 Q. All right. What's the minimum number of  
 3 persons that serve on a breaching team?  
 4 A. One.  
 5 Q. And that's the person that actually knocks  
 6 down the door?  
 7 A. Yes.  
 8 Q. All right. Maybe I've used the wrong  
 9 terminology. How many persons serve on an entry team?  
 10 A. Again, situation dictates.  
 11 Q. Is it ever less than two?  
 12 A. I would not think so.  
 13 Q. Okay. So the operator of the breaching team  
 14 or the ram is responsible for ensuring the safe and  
 15 swift egress of the tactical team through any obstacle  
 16 or environment, correct?  
 17 A. That's what this page says.  
 18 Q. Is that true?  
 19 A. That's what the NTOA teaches.  
 20 Q. Well, do you take issue with that statement,  
 21 Officer?  
 22 A. I don't take issue with it.  
 23 Q. And if an officer is going to perform the  
 24 breaching function, would you agree with me that he  
 25 would have to have training and also practice

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1 performing this function in order to safely perform it?  
 2 A. Ideally.  
 3 MR. THOMPSON: Objection as to form.  
 4 BY MR. GOSMAN:  
 5 Q. What do you mean by "ideally"?  
 6 A. I mean, that we don't work in ideal  
 7 situations all the time.  
 8 Q. Well, it's true. I mean, there are  
 9 emergencies where you just don't have the luxury of  
 10 sitting down and thinking things out and planning,  
 11 correct?  
 12 MS. WESTBY: Object to the form of the  
 13 question.  
 14 MR. THOMPSON: Join.  
 15 THE WITNESS: Can you repeat that?  
 16 BY MR. GOSMAN:  
 17 Q. You don't have the luxury in every  
 18 circumstance of planning your entry, correct?  
 19 A. (No response.)  
 20 Q. In emergency situations, there may arise  
 21 occasions when you do not have the opportunity to  
 22 reflect and plan the entry, correct?  
 23 A. That may happen.  
 24 Q. Well, Officer, let's do it this way: If you  
 25 have the time to sit down and think about what you're

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1 going to do, certainly you would want to employ an  
 2 entry team that was well-trained, correct?  
 3 MR. THOMPSON: Object to form.  
 4 MS. WESTBY: Join.  
 5 BY MR. GOSMAN:  
 6 Q. If you had that opportunity.  
 7 MR. THOMPSON: Same objection.  
 8 THE WITNESS: In the ideal situation, sure.  
 9 BY MR. GOSMAN:  
 10 Q. Okay. All right. Well, do you have a  
 11 specific example or thought in mind that would involve  
 12 a less-than-ideal situation where you had the time to  
 13 reflect and to plan an entry that you wouldn't want a  
 14 trained entry team?  
 15 MS. WESTBY: Object to the form of the  
 16 question.  
 17 THE WITNESS: I don't understand the  
 18 question.  
 19 BY MR. GOSMAN:  
 20 Q. I'm going to ask the reporter to read that  
 21 back, and I'll take it from that.  
 22 (The record was read as  
 23 requested.)  
 24 THE WITNESS: Can you read that one more  
 25 time?

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1 MR. GOSMAN: We can read it two more times if  
 2 we need it.  
 3 THE WITNESS: You might have to. It's kind  
 4 of lengthy.  
 5 (The record was read as  
 6 requested.)  
 7 MS. WESTBY: And answer if you can. But if  
 8 you don't understand, you can -- I have --  
 9 MR. GOSMAN: That's a speaking objection.  
 10 MS. WESTBY: I have no idea what your  
 11 question means.  
 12 MR. GOSMAN: You weren't asked the question,  
 13 Misha. Your objection is to form, correct?  
 14 MS. WESTBY: And the question needs to be  
 15 understandable. We need to understand.  
 16 THE WITNESS: Can you break it down?  
 17 BY MR. GOSMAN:  
 18 Q. All right. When would you -- if you had the  
 19 time to actually plan a breach, when would you face a  
 20 situation where you wouldn't have a trained breaching  
 21 team?  
 22 MR. THOMPSON: Objection as to form.  
 23 MS. WESTBY: Join.  
 24 THE WITNESS: When I had time to plan, when  
 25 would I not use a trained team? Was that the question?

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1 BY MR. GOSMAN:  
 2 Q. That is the very question, sir. That's it.  
 3 A. I don't know.  
 4 MS. WESTBY: Don't be rude. I don't  
 5 understand why you're rude.  
 6 BY MR. GOSMAN:  
 7 Q. As a matter of fact, there's no circumstance  
 8 where you would take an entry team into a home that  
 9 wasn't trained if you had the opportunity to plan in  
 10 advance for the operation, correct?  
 11 MS. WESTBY: Object to the form.  
 12 BY MR. GOSMAN:  
 13 Q. If you had the opportunity.  
 14 THE COURT REPORTER: I did not get your  
 15 answer.  
 16 THE WITNESS: I said, "If I had the  
 17 opportunity." And that was it.  
 18 BY MR. GOSMAN:  
 19 Q. Okay. Let's take a look there at that next  
 20 box, it is headed "Breaching Decision Logic." Do you  
 21 see that, sir?  
 22 A. Yes.  
 23 Q. And it identifies certain factors that are  
 24 involved in the decision to employ a breaching team,  
 25 would you agree with that?

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1 A. Yes.

2 Q. And one of those is reasonableness; would you

3 agree with that?

4 A. Yes.

5 Q. In other words, it is important to know

6 beforehand whether it's reasonable to use a breaching

7 team in a given case, correct?

8 MS. WESTBY: Object to the form.

9 THE WITNESS: I'm not sure what the context

10 of that slide is.

11 BY MR. GOSMAN:

12 Q. I'm asking you the question. I didn't ask

13 you the context of the slide, sir.

14 A. You asked me if it said reasonableness.

15 Q. No. I asked you if it was reasonable -- if

16 reasonableness was an important consideration in the

17 decision to employ a breaching team.

18 MR. THOMPSON: Object as to form.

19 MS. WESTBY: Join.

20 THE WITNESS: Yes

21 BY MR. GOSMAN:

22 Q. And it's part of -- let's just assume for a

23 moment that you were making a decision to employ a

24 breaching team, it would be part of your job to

25 determine whether it was reasonable to deploy a

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1 breaching team in the very first instance, correct?

2 MR. THOMPSON: Object to form.

3 MS. WESTBY: Join.

4 THE WITNESS: I thought I just answered that.

5 BY MR. GOSMAN:

6 Q. Well, go ahead and do it again, sir.

7 A. Can you repeat the question?

8 MR. GOSMAN: Can you repeat the question?

9 (The record was read as

10 requested.)

11 THE WITNESS: What do you mean by "the very

12 first instance"?

13 BY MR. GOSMAN:

14 Q. I mean before you made any other decisions,

15 you want to know whether you really needed a breaching

16 team, correct?

17 A. I don't know what you're talking about.

18 Q. Well, you don't need a breaching team to

19 serve a little old lady a traffic citation, correct, in

20 most cases?

21 MR. THOMPSON: Objection as to form.

22 THE WITNESS: In most cases, no.

23 BY MR. GOSMAN:

24 Q. All right. So you got to be reasonable when

25 you decide under what circumstances you were going to

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1 deploy a breaching team, correct?

2 MR. THOMPSON: Object as to form.

3 MS. WESTBY: Join.

4 THE WITNESS: Yes.

5 BY MR. GOSMAN:

6 Q. Let's go ahead and take a look on the next

7 page, Officer. It's Page 5, and there's another little

8 heading there says, "Don't dismiss the obvious." And

9 one of the bulleted items there is "knocking on the

10 door." Would you agree with me that knocking on the

11 door is appropriate in every case unless it's a

12 no-knock situation?

13 MS. WESTBY: Object to the form of the

14 question.

15 MR. THOMPSON: Join.

16 THE WITNESS: Knocking on the door is

17 appropriate when you're using a knock-and-announce

18 warrant.

19 BY MR. GOSMAN:

20 Q. Let's just clear this up right now. The

21 warrant in the Wachsmuth case was a knock-and-announce

22 warrant, correct?

23 A. Correct.

24 Q. And then it also -- under the next bulleted

25 item there says, "Try the doorknob first."

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1 A. Yes.

2 Q. Okay. And you'd agree with me, would you

3 not, that the breaching team should always try the

4 doorknob first?

5 A. No.

6 Q. Well, if it's a knock-and-announce warrant?

7 A. No.

8 Q. Under what circumstances would you not try

9 the doorknob?

10 A. It would depend on the situation.

11 Q. Well, go ahead and explain that.

12 Let's do this: Let's back up and we'll be

13 specific, and I'll help you out here. Let's take the

14 Wachsmuth situation, February 24th, 2009, why wouldn't

15 you have tried the doorknob first before you knocked

16 the door in?

17 A. I wasn't the breaching officer.

18 Q. I didn't say that, and I don't care.

19 A. You're asking me to speculate on another

20 officer.

21 Q. No.

22 MS. WESTBY: Okay. Badgering.

23 THE WITNESS: Yes, you are.

24 MR. GOSMAN: I'm not badgering the witness.

25 We're simply trying to get an answer.

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1 MS. WESTBY: You absolutely are.  
2 MR. GOSMAN: This witness is not answering  
3 the questions. He's being completely evasive.  
4 MS. WESTBY: That is not true.  
5 MR. THOMPSON: Well, Counsel, just because  
6 you don't get the answer that you want from the  
7 witness --  
8 MR. GOSMAN: No, it's not about getting the  
9 answer I --  
10 MR. THOMPSON: Let me finish and put my  
11 objection on the record. Because this is getting to  
12 the point of stopping these depositions and getting a  
13 protective order. We put up with it yesterday. I'm  
14 not going to put up with it for the rest of the week.  
15 You're badgering the witness. You're trying  
16 to intimidate the witness. Because he doesn't give you  
17 the answer to your question doesn't mean he's being  
18 evasive. He's answering honestly.  
19 MR. GOSMAN: All right. Let's go ahead and  
20 ask for the last question to be repeated.  
21 (The record was read as  
22 requested.)  
23 MS. WESTBY: And then go -- finish the rest  
24 of that because there's -- if you will, please. He  
25 answered.

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1 MR. GOSMAN: Well, that's the question. It's  
2 my deposition at this point.  
3 MS. WESTBY: But here's the problem: I'm not  
4 going to allow you to treat witnesses that way. I'm  
5 not sure what's going on here. But it's inappropriate.  
6 And I'm not going to allow it. So please refrain from  
7 behaving that way.  
8 MR. GOSMAN: All right. Well, we're going to  
9 have to ask the question again now. So let's go ahead  
10 and start over. And then we'll ask the witness to  
11 answer the question.  
12 Just repeat what you read a moment ago.  
13 (The record was read as  
14 requested.)  
15 MR. GOSMAN: All right.  
16 BY MR. GOSMAN:  
17 Q. Officer, the question was: In the Wachsmuth  
18 warrant service on the 24th of February, 2009, the  
19 battering ram was applied, and it appears that no one  
20 made an effort to try the doorknob. And I'm asking  
21 you: Was that appropriate?  
22 A. Going back to Page 4, Breaching Decision  
23 Logic: Safety, speed, noise.  
24 Q. Okay. So --  
25 A. Would be the specific reasons why.

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1 Q. In other words, you didn't feel that it  
2 was -- that it was appropriate to try the door to the  
3 Wachsmuth residence because of safety, speed, noise?  
4 A. Correct.  
5 Q. And how was officer safety implicated by  
6 failing to -- or by knocking on the doorknob -- I'm  
7 sorry -- by trying the doorknob before you entered the  
8 residence?  
9 MR. THOMPSON: Objection as to form.  
10 MS. WESTBY: Join.  
11 THE WITNESS: How was officer safety --  
12 BY MR. GOSMAN:  
13 Q. Affected?  
14 A. -- affected by not trying the doorknob?  
15 Q. Yes.  
16 MR. THOMPSON: Objection as to form.  
17 THE WITNESS: It increased the time that we  
18 were standing outside the door.  
19 BY MR. GOSMAN:  
20 Q. By how much?  
21 A. I don't know.  
22 Q. Less than a second?  
23 A. I don't know.  
24 Q. Okay. Then we have another box on the bottom  
25 of Page 5, "Breach Point Intelligence," debriefs of the

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1 UC or CI involvement and have them diagram and describe  
2 the structure. Did you do that in this case, Officer?  
3 A. Not personally.  
4 Q. Did anyone have the CI diagram the structure?  
5 A. Yes.  
6 (Exhibit 10 identified)  
7 BY MR. GOSMAN:  
8 Q. And let's go ahead and take a quick peek at  
9 Exhibit 10. Does the information on Page 1 describe  
10 the information given to you by the -- or given to  
11 Officer Miner by the confidential informant?  
12 A. No, it was more detailed.  
13 MR. THOMPSON: Objection as to the form.  
14 BY MR. GOSMAN:  
15 Q. Where are those diagrams?  
16 A. They were written on the dry erase board  
17 downstairs.  
18 Q. Did you serve on a SWAT team, then, during  
19 your employment with the College Park Police  
20 Department?  
21 A. I did.  
22 Q. Was it -- did College Park have its own SWAT  
23 team or was it a joint agency team?  
24 A. We had our own SWAT team.  
25 Q. How many SWAT operations were you involved

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1 in?

2 A. I couldn't begin to guess a specific number.

3 Q. Well, was it more than 50?

4 A. I would say that would be accurate.

5 Q. Were you ever a team leader?

6 A. Yes.

7 Q. Were you ever involved in training team

8 members?

9 A. Yes.

10 Q. How long were you -- in how many of the

11 operations that you were involved in were you a team

12 leader?

13 A. Close to half.

14 Q. Twenty-five?

15 A. Ballpark.

16 Q. Okay. And what was involved in training team

17 members?

18 A. There was -- you want me to make a list

19 or ...

20 Q. Yes, I do.

21 A. Okay. Physical fitness, marksmanship,

22 building and room clearing. Training on the different

23 weapon systems, less lethal training, distraction

24 device training, sniper training, breaching training.

25 Covered pile training, felony vehicle assault training,

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1 officer rescue training, active shooter training. I

2 don't know if I'm repeating myself here, but barricaded

3 gunman situations, hostage situations, high-risk

4 warrants. Not an all inclusive list, but ...

5 Q. And those are things you actually trained

6 other officers in connection with your SWAT team?

7 A. Yes.

8 Q. And this is part of the training that you

9 repeated over and over twice a month during the period

10 that you were with the College Park SWAT team?

11 A. Some aspects of this, yes.

12 (Exhibit 6 identified)

13 BY MR. GOSMAN:

14 Q. Let's go ahead and take a look at Exhibit 6,

15 Officer. You provided us with a selection of

16 after-action reviews for SWAT jobs that you were on,

17 correct?

18 A. Yes.

19 Q. And do you have any others in your

20 possession?

21 A. Not that I'm aware of. I'd have to check

22 these against my computer file.

23 Q. Okay.

24 A. But it looks like they are all there.

25 Q. All right. Let me ask this question: Why

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1 did you keep these five or six?

2 A. Well, I started doing this for the captain

3 that was over the patrol division at the time. Because

4 we had expressed to him that we needed additional

5 equipment. This was a means for me to show him that we

6 were doing things that were less than ideal. It wasn't

7 a requirement.

8 Q. After-action reviews are a requirement,

9 though, of a SWAT team commander, are they not?

10 A. No.

11 Q. When you performed on a SWAT team for College

12 Park, and you were the team leader, did you prepare

13 a -- an action plan beforehand?

14 MR. THOMPSON: Objection as to form.

15 BY MR. GOSMAN:

16 Q. An entry plan?

17 I'll rephrase that.

18 A. When I was the team leader, and I was

19 present, it usually fell to me to come up with a plan.

20 Q. Well, that's the team leader's job, correct,

21 to create the entry plan?

22 A. When he's there.

23 Q. Okay. And when you're done with the SWAT

24 operation, there's a debriefing, correct?

25 A. Ideally.

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1 Q. All right. And then there is an after-action

2 review, a document that substantiates the actions

3 taken, the problems, and any thoughts about improving

4 the SWAT team performance?

5 A. Again, I started doing that on my own. No

6 requirement.

7 Q. Did you prepare such a document after the

8 Wachsmuth warrant?

9 A. No.

10 Q. Why not?

11 A. Because we don't have a SWAT team.

12 Q. Take a look at the documents that we've

13 identified as Exhibit 6, and tell me if any of those

14 are knock-and-announce warrants.

15 And while you're looking, there are several

16 things that we're going to be asking about this group

17 of documents. Were they felony warrants? Were they

18 knock-and-announce warrants? And were they locations

19 in high-crime areas?

20 MR. THOMPSON: You got one question pending.

21 and you just asked three more.

22 MR. GOSMAN: I know, but he's going to look

23 at all these things --

24 THE WITNESS: Yes, there is. At least one of

25 these talks about a warrant where there was not a

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1 no-knock clause.  
2 BY MR. GOSMAN:  
3 Q. Okay. Was there a knock-and-announce clause  
4 in that?  
5 A. Yes.  
6 Q. Now, were these all felony warrants?  
7 A. I don't know.  
8 Q. What's your guess?  
9 MR. THOMPSON: Objection as to form.  
10 MS. WESTBY: Join.  
11 THE WITNESS: I really don't have any idea.  
12 BY MR. GOSMAN:  
13 Q. You've got barricaded subjects, doors that  
14 are locked, windows that are barred. Does that sound  
15 like misdemeanor service to you?  
16 MR. THOMPSON: Objection to form. Asked and  
17 answered.  
18 MS. WESTBY: Join.  
19 THE WITNESS: I don't know.  
20 BY MR. GOSMAN:  
21 Q. You don't know?  
22 A. No.  
23 Q. Were these locations in high-crime areas?  
24 A. Yes.  
25 Q. Were there drug trafficking operations

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1 suspected at these locations?  
2 A. Yes.  
3 Q. Generally, drug trafficking is a felony,  
4 wouldn't you agree with me there?  
5 MR. THOMPSON: Objection as to form.  
6 THE WITNESS: Let me back up one. I would  
7 say that there's drug dealing, not drug trafficking.  
8 BY MR. GOSMAN:  
9 Q. What's the difference?  
10 A. Weight.  
11 Q. What's the difference in weight?  
12 A. I don't know specifically. I know that in  
13 Georgia it wouldn't be considered trafficking unless  
14 you had a certain -- but there was a difference  
15 between -- it was called something different. It  
16 wasn't called delivery. It was called intent to  
17 distribute or something along those lines.  
18 Q. Okay.  
19 A. It differentiated that between that and  
20 trafficking.  
21 Q. Were you the team leader for each of the  
22 operations that are reflected in Exhibit 6?  
23 A. Yes.  
24 Q. Do you know what SWAT stands for?  
25 A. Special Weapons and Tactics.

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1 Q. What are the special weapons available to  
2 SWAT teams?  
3 A. Automatic weapons, grenade launchers.  
4 Q. They include automatic weapons, correct?  
5 Does that include semiautomatic long rifles?  
6 A. No.  
7 Q. Do they include battering rams or other  
8 devices?  
9 A. Are you talking about special weapons, or are  
10 you talking about something else?  
11 Q. Tactics.  
12 A. Tactics, I wouldn't think, describes pieces  
13 of equipment.  
14 Q. Well, the battering rams or other entry  
15 devices are special tools used by SWAT teams, are they  
16 not?  
17 A. And other groups of officers, yes.  
18 Q. And do they include noise distractions or  
19 flashbang devices?  
20 A. They could.  
21 Q. And what are the special tactics that are  
22 used by SWAT teams?  
23 A. I don't -- I don't know that anymore they are  
24 any different than what all officers are trained in.  
25 The difference is that SWAT teams train as a unit

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1 together on some kind of frequency.  
2 Q. Okay. So basically, what you're telling me  
3 is that all officers can function as a SWAT team in a  
4 given situation; is that true?  
5 MR. THOMPSON: Objection as to form.  
6 THE WITNESS: That's not what I'm telling  
7 you.  
8 BY MR. GOSMAN:  
9 Q. What are you telling me?  
10 A. I'm telling you the tactics that we train  
11 SWAT officers on are the same tactics that we train  
12 street officers on.  
13 BY MR. GOSMAN:  
14 Q. What's the difference then?  
15 A. Some agencies have the luxury of having  
16 enough people, time, equipment, to designate certain  
17 people to be on some kind of team. They don't all call  
18 it a SWAT team.  
19 Q. So the difference is if a community is large  
20 enough to have a SWAT team, they can call it a SWAT  
21 team. And if they are smaller and don't have the  
22 resources, they just use officers to perform the same  
23 function?  
24 MS. WESTBY: Object to the form of the  
25 question.

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1 MR. THOMPSON: Join.  
2 THE WITNESS: You can call it whatever you  
3 want. I've seen SWAT teams that were less qualified  
4 than street officers that I've worked with.  
5 BY MR. GOSMAN:  
6 Q. Well, that wasn't my question, though,  
7 Officer. We're talking about the difference between  
8 SWAT team and just a group of officers.  
9 A. And I told you what the difference was.  
10 Q. And what is it?  
11 A. That they meet on some kind of regular basis  
12 and train as a unit.  
13 Q. Okay. And smaller communities don't have the  
14 luxury of doing that. Did you say that?  
15 A. I don't know. I did not say that.  
16 Q. Okay. Well, what is it about a smaller  
17 community that has a bearing on whether you're a SWAT  
18 team or whether you're a group of officers functioning  
19 as a SWAT team?  
20 MR. THOMPSON: Objection as to form.  
21 MS. WESTBY: Join.  
22 THE WITNESS: I don't know. Small community  
23 was your words.  
24 BY MR. GOSMAN:  
25 Q. All right. So does the City of Powell have a

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1 SWAT team?  
2 A. No.  
3 Q. Do they have officers that train as a unit?  
4 A. We all train together.  
5 Q. Do you have the training that would qualify  
6 you for a SWAT team?  
7 MR. THOMPSON: Objection as to form.  
8 MS. WESTBY: Join.  
9 THE WITNESS: What qualifications?  
10 BY MR. GOSMAN:  
11 Q. I'm going to use your experience as a SWAT  
12 team leader and as a member of a SWAT team for several  
13 years at College Park.  
14 A. I would say any member of this agency would  
15 have been able to serve on the SWAT team at College  
16 Park.  
17 Q. So were you functioning -- did you have a  
18 group that functioned as a SWAT team, then?  
19 MR. THOMPSON: Objection as to form.  
20 MS. WESTBY: Join.  
21 THE WITNESS: We didn't have anything called  
22 a SWAT team here.  
23 BY MR. GOSMAN:  
24 Q. And you didn't have the training for a SWAT  
25 team, at least based even on your experience that you

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1 had as a SWAT team leader in Georgia?  
2 MR. THOMPSON: Objection as to form.  
3 MS. WESTBY: Join.  
4 MR. THOMPSON: Go ahead.  
5 THE WITNESS: We did not have the same  
6 training in Powell that we had in College Park.  
7 BY MR. GOSMAN:  
8 Q. What is the difference between a typical SWAT  
9 team high-risk warrant service and the warrant service  
10 that was performed by the Powell police officers on the  
11 4th of February 2009?  
12 MR. THOMPSON: Objection as to form.  
13 MS. WESTBY: Join.  
14 THE WITNESS: What's the difference between a  
15 SWAT team executing a high-risk warrant service and  
16 what we did on February 2009?  
17 BY MR. GOSMAN:  
18 Q. Yes.  
19 A. The name.  
20 Q. Would you agree that SWAT teams are reserved  
21 for special assignments involving risks, which exceed  
22 the capability of an agency's first responders?  
23 MR. THOMPSON: Objection as to form.  
24 MS. WESTBY: Join.  
25 THE WITNESS: Again, ideally, in a perfect

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1 world.  
2 BY MR. GOSMAN:  
3 Q. Does Park County have a SWAT team?  
4 A. I don't know.  
5 Q. Does the Park County sheriff's office have a  
6 SWAT team?  
7 A. They have a group of officers. I'm not sure  
8 what they call it. I don't think they call it SWAT.  
9 Q. It's a specially trained unit, correct?  
10 A. I don't know. I don't have any firsthand  
11 knowledge of that.  
12 Q. Have you ever asked anybody?  
13 MR. THOMPSON: Asked anybody what?  
14 BY MR. GOSMAN:  
15 Q. Whether or not Park County had a specially  
16 trained unit that performed SWAT functions.  
17 A. I may have had conversations with deputies.  
18 Q. You may have?  
19 A. I may have. I don't recall specifically.  
20 Q. If there was time to plan an entry where you  
21 felt the SWAT team was needed, would it have been  
22 appropriate in your mind, Officer, to consult with a --  
23 an agency that actually had a unit trained for that  
24 purpose?  
25 A. I think we did ask the sheriff's office.

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1 Q. Thank you.  
2 What is the formal training, of which you're  
3 aware, of the officers of the Powell Police Department  
4 in dynamic police tactics?  
5 MS. WESTBY: Object to the form of the  
6 question.  
7 MR. THOMPSON: Join.  
8 THE WITNESS: The training that I've had  
9 consisted of Doug Pechtel coming here, and my field  
10 training. When I was hired initially, we covered the  
11 subjects that they had covered in previous training  
12 with Doug.  
13 (Exhibit 27 identified)  
14 BY MR. GOSMAN:  
15 Q. Why don't you go ahead and take a look at  
16 Exhibit No. 27. And identify that for me, if you can?  
17 A. "Patrol Officer Specialized Tactics Course."  
18 Q. Is that the course that Doug Pechtel offered  
19 to some of the Powell police officers?  
20 A. I don't know. I don't know when this is  
21 from.  
22 Q. Well, let's take a look at the first page.  
23 A. Okay.  
24 Q. Did you take that course?  
25 A. I don't remember if this is what it was

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1 called.  
2 Q. Let's go back to Exhibit I and look at your  
3 Wyoming P.O.S.T. records and see if we could clear it  
4 up.  
5 A. Well, it wouldn't be on here because the  
6 training I had with Pechtel occurred in the fall of  
7 2009. This only goes up to February.  
8 Q. Okay. Did you understand that the training  
9 that you were receiving in the course that you took  
10 from Doug Pechtel was not intended to provide a  
11 SWAT-type team?  
12 A. No.  
13 Q. Okay. You've got Exhibit 27 there in front  
14 of you. Let's go ahead and turn to Page 27. You're  
15 familiar with the P.I.E.R. philosophy?  
16 A. Yeah, I'm sure he covered it.  
17 Q. Okay. Do you see down from -- in the third  
18 photograph, "P.I.E.R. is not intended to be used as a  
19 SWAT team"?  
20 MS. WESTBY: What page?  
21 THE WITNESS: I'm on Page 27. I don't see  
22 that.  
23 MS. WESTBY: Bates stamped?  
24 MR. GOSMAN: Miner training 30. One, two,  
25 three --

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1 THE WITNESS: Page 30.  
2 MR. GOSMAN: Yeah, it is. Bates-stamped 30.  
3 It's Page 27.  
4 THE WITNESS: Okay. I was looking at that  
5 stamp.  
6 MR. GOSMAN: Okay.  
7 THE WITNESS: What was the question again?  
8 BY MR. GOSMAN:  
9 Q. "P.I.E.R. is not intended to be used as a  
10 SWAT team"?  
11 A. I see that.  
12 Q. Okay. It's not intended to be used as a  
13 means of resolving any type of critical incident, other  
14 than a immediate life-threatening crisis?  
15 A. I see that.  
16 (Exhibit 28 identified)  
17 BY MR. GOSMAN:  
18 Q. Now, I'm going to ask you to go ahead and  
19 take a look at Exhibit 28.  
20 A. Okay.  
21 Q. Have you ever had this course, "Immediate  
22 Action for Patrol"?  
23 A. I think this is what -- I think this is the  
24 one that I attended.  
25 Q. And what was the purpose of that course?

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1 MR. THOMPSON: Objection as to form.  
2 THE WITNESS: To train your officers in the  
3 techniques and procedures used to handle these types of  
4 situations.  
5 BY MR. GOSMAN:  
6 Q. Situations that require immediate action,  
7 correct?  
8 MR. THOMPSON: Objection as to form.  
9 THE WITNESS: Whatever situations we might  
10 have to deal with.  
11 BY MR. GOSMAN:  
12 Q. Well, let's go ahead and take a look at the  
13 course goals, Officer. It's on page -- it's  
14 Bates-stamped 39.  
15 A. Uh-huh.  
16 Q. And you'll see there under "Course Goals,"  
17 that the training is to enhance and develop tactics,  
18 techniques, and procedures to resolve in-progress calls  
19 where innocent lives are in imminent jeopardy. Do you  
20 see that?  
21 A. I do.  
22 Q. And do you see -- I'm going to ask you to  
23 turn to Page 42 now of those documents?  
24 A. Bates-stamped?  
25 Q. I'm sorry. I'm referring now to Bates

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1 stamps, so it's Page 42.  
2 A. Okay.  
3 Q. And there's a heading there, "IA for Patrol  
4 Fundamentals"?  
5 A. Uh-huh.  
6 Q. And do you see that third bulleted item, "not  
7 intended to be used as a means of resolving any type of  
8 critical incident, other than an immediate  
9 life-threatening crisis"?  
10 A. I do.  
11 (Exhibit 29 identified)  
12 BY MR. GOSMAN:  
13 Q. Now, let's take a look at Exhibit 29. Have  
14 you ever seen this document before?  
15 A. I believe I did during my field training.  
16 Q. Did you participate in a course involving  
17 these materials, do you recognize your field training?  
18 A. We would have covered these materials during  
19 field training, I believe.  
20 Q. Let's go ahead and turn to the Bates-stamp  
21 No. 67 in that document, sir. Critical incidents are  
22 defined on this page; would you agree with that?  
23 A. Yes.  
24 Q. And I want you to go ahead and read, under  
25 Paragraph B, that text into the record, please.

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1 your community, would you agree with me that you should  
2 employ that SWAT team, if at all possible?  
3 MR. THOMPSON: Objection as to form.  
4 MS. WESTBY: Join.  
5 THE WITNESS: Depend on the circumstances.  
6 BY MR. GOSMAN:  
7 Q. Well, as a general proposition, if you had  
8 the time, all of the things being equal, to consult  
9 with and employ a SWAT team that was trained in your  
10 area, wouldn't it be preferable to use a SWAT team for  
11 that entry?  
12 MR. THOMPSON: Objection as to form.  
13 MS. WESTBY: Asked and answered.  
14 THE WITNESS: In a perfect world.  
15 BY MR. GOSMAN:  
16 Q. Well, let's go ahead and talk about the world  
17 as it existed on February 24th, 2009. Let me ask  
18 first: Did you make an effort to employ -- I believe  
19 you may have testified that you did -- a SWAT team that  
20 was trained in your area?  
21 A. I was aware that somebody had contacted the  
22 sheriff's department, and we were told that they were  
23 not going to assist us.  
24 Q. Did they say why?  
25 A. I don't remember. I didn't talk to them.

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1 A. "Types we are most likely to face: It would  
2 take a fully trained SWAT or hostage rescue team to  
3 deal with many of these. As an agency, we cannot  
4 justify a SWAT team by these types of activity being  
5 commonly present here or by budgetary means, as SWAT  
6 teams require a great amount of training time."  
7 Q. Let's take that last clause first. Would you  
8 agree that SWAT teams require a great amount of  
9 training time?  
10 A. I don't -- I'm not aware of any specific  
11 requirement.  
12 Q. Do you disagree with that statement, then?  
13 A. No.  
14 Q. And wouldn't it be true, Officer, that if you  
15 were faced with a situation that required a SWAT team  
16 or a SWAT-type entry, and you had the opportunity to  
17 engage a SWAT team, that you would want to do so?  
18 MS. WESTBY: Object to the form of the  
19 question.  
20 MR. THOMPSON: Join.  
21 THE WITNESS: Can you repeat the question?  
22 BY MR. GOSMAN:  
23 Q. If you had time prior to the entry into a  
24 home that required dynamic tactics, SWAT-type tactics,  
25 and you had available an agency that had a SWAT team in

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1 Q. Did that seem to be important to you at all?  
2 MR. THOMPSON: Objection as to form.  
3 MS. WESTBY: Join.  
4 THE WITNESS: Not really.  
5 BY MR. GOSMAN:  
6 Q. We heard Officer Danzer yesterday describe  
7 his weapon position as he entered the home and  
8 performed the room clearing operations.  
9 Let me ask first: Was he assigned to clear  
10 rooms?  
11 A. He was a member of the entry team.  
12 Q. Did he have --  
13 A. One of those -- the duties of the entry team  
14 would have been to secure the residence.  
15 Q. Did he have a specific duty beyond just  
16 simply being on the entry team?  
17 A. He wasn't assigned to any particular room, if  
18 that's what you mean. Our general duty was to secure  
19 the residence.  
20 Q. That was as far as it went?  
21 A. Unless you have something specific in mind,  
22 yeah, that was it.  
23 Q. Okay. Officer Danzer described his weapon  
24 position as he performed the room-clearing operations  
25 as being in the down position. It would be the gun was

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1 pointed down?  
2 A. Correct.  
3 Q. Is that the correct position to perform a  
4 room-clearing operations in a tactical setting?  
5 A. Absolutely.  
6 Q. Let's go ahead and take a look at -- we're in  
7 Exhibit 29. It's Page 73. Go ahead. I'll let you get  
8 there.  
9 A. Bates-stamped 73?  
10 Q. Yes, sir.  
11 A. Okay.  
12 Q. And at the top of the page, it has a heading,  
13 says, "Weapon Position," do you see that?  
14 A. I do.  
15 Q. And what is the weapon position for this type  
16 of entry?  
17 MS. WESTBY: Object to the form of question.  
18 Type of entry?  
19 MR. GOSMAN: Yes  
20 MR. THOMPSON: Join.  
21 BY MR. GOSMAN:  
22 Q. In a dynamic situation?  
23 MR. THOMPSON: Object as to form.  
24 MS. WESTBY: Join.  
25 THE WITNESS: You want me to describe the

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1 with your weapon aimed where your eyes are looking."  
2 Q. Do you disagree with that?  
3 A. I don't disagree that when you have a target,  
4 your weapon is aimed where your eyes are looking.  
5 Q. That wasn't what I asked. Do you disagree  
6 with the paragraph as it's written?  
7 MS. WESTBY: Object to the form of the  
8 question.  
9 MR. THOMPSON: Join.  
10 BY MR. GOSMAN:  
11 Q. Well, the question doesn't say when you're  
12 viewing a target. It says viewing a target area, does  
13 it not?  
14 MS. WESTBY: Object to the form of the  
15 question.  
16 MR. THOMPSON: Join.  
17 THE WITNESS: Again, I don't know exactly  
18 what it's referring to.  
19 BY MR. GOSMAN:  
20 Q. Do you disagree with it?  
21 A. I guess I don't understand it.  
22 Q. So you don't understand it, and therefore  
23 you're not able to agree or disagree with it?  
24 A. Correct.  
25 Q. You performed Israeli Leans?

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1 weapon position?  
2 BY MR. GOSMAN:  
3 Q. Yeah, I do. I want you to describe the  
4 weapon position that's listed there.  
5 A. Okay. I'm not familiar with the term  
6 "constant ready." But the term that we use is ready.  
7 The ready position is that the weapon is lowered. It's  
8 slung around your neck and shoulder. The weapon is  
9 lowered so that you can observe with both eyes,  
10 unobstructed.  
11 Q. Okay. When you go room to room in a home,  
12 there are certain procedures for actually entering the  
13 rooms, correct?  
14 A. Uh-huh.  
15 Q. Such as the Israeli Lean or slicing the pie?  
16 A. That's a tactic.  
17 Q. And you'll notice in Paragraph 8 just below  
18 there, there is the Israeli Lean described.  
19 A. Yes.  
20 Q. Okay. And do you see under Paragraph B -- by  
21 the way, that is highlighted, isn't it?  
22 A. Uh-huh.  
23 Q. Why don't you read that into the record.  
24 A. Paragraph B reads: "Weapon acquisition,  
25 viewing the target area just off of your sight picture

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1 A. I have.  
2 Q. You taught people the Israeli Lean?  
3 A. I have.  
4 Q. All right. Let's take a look at Paragraph  
5 No. 9, "Slicing the Pie."  
6 A. Okay.  
7 Q. Under paragraph -- and by the way, slicing  
8 the pie is another tactic for clearing rooms in a  
9 tactical situation?  
10 A. Or corners, yes.  
11 Q. And let's take a look at Paragraph D. I want  
12 you to read that into the record for me, please?  
13 A. Looks like it's identical to Paragraph B  
14 under eight. "Weapon acquisition, viewing the target  
15 area just off of your sight picture with your weapon  
16 aimed where your eyes are looking."  
17 Q. Okay. And do you not understand that  
18 sentence either then, sir?  
19 A. No.  
20 Q. No, you do not understand it?  
21 A. No, I don't.  
22 (Exhibit 11 identified)  
23 BY MR. GOSMAN:  
24 Q. Okay. Let's go back for just a moment to  
25 Exhibit 11. There are three diagrams there.

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1 A. Okay.  
2 Q. Are those diagrams accurate in terms of the  
3 labels that are attached to it?  
4 A. This is not the ready position that I'm  
5 familiar with.  
6 Q. Do you know where these materials came from?  
7 A. No, I don't.  
8 Q. They are from the firearms training materials  
9 that were supplied by the City of Powell. And you're  
10 telling me that you don't recognize that as the ready  
11 position?  
12 A. No. That's not how I train people in the  
13 ready position. That's not how I was trained in the  
14 ready position.  
15 Q. Let's go ahead and take a look at Exhibit 12.  
16 Oh, well, let's see. Before we do that, we have one  
17 last page in Exhibit 11.  
18 A. Okay.  
19 Q. Let's see here. Take a minute and read that.  
20 A. Out loud?  
21 Q. Yes.  
22 A. "Universal Cover Mode."  
23 Q. Okay.  
24 A. "UCM. One, weapon shouldered. Two, sights  
25 just below the threat, hands visible. Front side in

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1 peripheral vision. Safety off. Finger off trigger."  
2 Q. Okay. Have you ever seen that before?  
3 A. Yes.  
4 Q. Do you disagree with that description?  
5 A. No.  
6 Q. All right. Let's go back to Exhibit 29,  
7 Page 73, under the heading "Weapon Position,"  
8 Paragraph 7.  
9 A. Uh-huh.  
10 Q. The weapon position is the cover position,  
11 correct?  
12 A. That's not what it says  
13 Q. Okay. It says "constant ready" or "cover  
14 position"?  
15 A. Yes.  
16 Q. All right.  
17 A. Dependent upon the circumstances.  
18 Q. So in other words, the cover position we just  
19 described from Exhibit 11 is a position that is  
20 employed in room clearing?  
21 A. Again, the universal cover mode is used when  
22 you have a threat.  
23 Q. Well, when you go into -- when you're doing a  
24 dynamic entry into a home, you assume there's a threat  
25 in every room, correct?

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1 A. I try not to assume anything.  
2 Q. But you're trained to assume worst-case  
3 scenario as Officer Danzer put it so eloquently last  
4 night?  
5 A. We generally don't assume the best case.  
6 MR. THOMPSON: Can we take a break, Counsel?  
7 We've been going at it for almost two hours.  
8 MR. GOSMAN: Yes, we can.  
9 (Recess taken 10:43 to 11:26  
10 a.m., October 5, 2010)  
11 BY MR. GOSMAN:  
12 Q. Officer, we're still sort of working our way  
13 through Exhibit 29. I'll ask you to turn there again  
14 for a moment. And I'm going to refer specifically to  
15 Page 81. And under Paragraph D --  
16 A. Mr. Gosman.  
17 Q. Yes.  
18 A. I've got Defendant's 80, and then it looks  
19 like 84. The page numbers go from 18 to 22.  
20 Q. Okay.  
21 A. Is this the page?  
22 Q. No, it's not. Hang on here just a second,  
23 and I'll get this squared up for you because we added  
24 some pages last night. Let's see, I made copies --  
25 what did I do with them? I gave everybody a copy, but

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1 myself it would appear.  
2 MR. GOSMAN: Tom, I see the pages that I'm  
3 looking for right there. I may have two sets there, as  
4 a matter of fact.  
5 Okay. So 18, 19, 20, 21 and 22. Okay.  
6 BY MR. GOSMAN:  
7 Q. Okay. You see Paragraph D there?  
8 A. On Page 81?  
9 Q. It's actually Document 81, Page 18.  
10 A. Okay.  
11 Q. Would you read the principles of dynamic  
12 entry into the record for me?  
13 A. "One, surprise; two, speed; three, violence  
14 of action; four, still need a definite plan. The goal  
15 of which is to stop the threat. You must not deviate  
16 from the plan under any circumstances. You may have to  
17 adapt to overcome the unexpected. But do not deviate  
18 from the plan. The difference between these two is if  
19 you still carry out your assignment at the designated  
20 time with the desired results. Never deviate from the  
21 plan."  
22 Q. Have you been taught those principles?  
23 A. I recognize the first three.  
24 Q. Okay. Do you have any reason to disagree  
25 with Paragraph No 4 regarding the planning?

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1 A. Yes.  
2 Q. Okay. Go ahead and tell me about it.  
3 A. You do need a plan. agree, you do need a  
4 plan.  
5 Q. Okay. Is it -- it says, "Never deviate from  
6 the plan." It's capped and bolded. Do you agree with  
7 that statement?  
8 A. No.  
9 Q. Would you agree that the warrant service that  
10 was performed on the Wachsmuth home on the 24th of  
11 February 2009, involved the principles of dynamic  
12 entry, surprise, speed, action?  
13 A. Yes.  
14 MS. WESTBY: Object to the form of the  
15 question.  
16 BY MR. GOSMAN:  
17 Q. Now, let's take a look on Page 18, which is  
18 Bates-stamped 80 of this same document. And we're  
19 going to take a look at Paragraph 5, the introduction  
20 to dynamic entry -- dynamic force, and then under  
21 Paragraph B, you'll see the question, "Why dynamic?"  
22 Do you see that?  
23 A. I do.  
24 Q. Okay. And these are from the training  
25 materials that were on hand at the Powell Police

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1 Department. And pertain to a course which you took as  
2 part of your field training, correct?  
3 A. I believe so.  
4 Q. Why don't you go ahead and read into the  
5 record Paragraph B.  
6 A. "Why dynamic? One if life is threatened:  
7 A, suicide; B, harm others.  
8 Number 2, if evidence may be destroyed: A,  
9 drug arrests."  
10 Q. Okay. Do you agree that those are the  
11 reasons why a dynamic entry would be used by a police  
12 team?  
13 MR. THOMPSON: Objection as to form.  
14 MS. WESTBY: Join.  
15 THE WITNESS: Those are some reasons.  
16 BY MR. GOSMAN:  
17 Q. All right. So you're telling me that the  
18 course materials have left out reasons why dynamic  
19 force would be used by law enforcement?  
20 A. Possibly.  
21 Q. What are they?  
22 A. I don't know.  
23 Q. All right. Let's go ahead and address the  
24 information contained in Paragraph No. 2. Would you  
25 agree with me that if evidence may be destroyed,

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1 dynamic entry would be appropriate?  
2 A. Yes.  
3 Q. And based on what you knew from the  
4 confidential informant, on the 24th of February 2009,  
5 was there any significant risk that the evidence would  
6 be destroyed?  
7 A. I don't know.  
8 Q. How do you destroy a marijuana grow operation  
9 between the time it takes to knock on a door and wait  
10 for somebody to answer it?  
11 A. I can only testify to my personal experience.  
12 Q. Go ahead.  
13 A. Well in College Park, we had a drug search  
14 warrant served on an apartment where the subjects put  
15 their entire stash of marijuana into the oven and  
16 burned it.  
17 Q. How long did that take?  
18 A. I don't know.  
19 Q. Okay. Well, it didn't happen within a  
20 minute, though, did it?  
21 A. I don't know.  
22 Q. It's hard to flush two marijuana plants that  
23 are 2 feet tall and down in the basement down the  
24 toilet; isn't that true?  
25 A. I don't grow marijuana. I don't know.

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1 Q. Well, and I'm not going to doubt for one  
2 minute that you don't grow marijuana. But you were  
3 involved in the drug arrest here and you and I both  
4 know that these are questions that you considered that  
5 night before you went into the home, correct?  
6 A. I didn't know what the extent of the grow  
7 operation was. I didn't know how big the plants were.  
8 I just knew that there was a marijuana grow operation.  
9 Q. Okay. We'll talk more about that later.  
10 And getting back to my question, was it  
11 realistic that the plants would be flushed down the  
12 toilet before you could get into the residence in a  
13 reasonable period of time?  
14 A. Would depend on how big the plants were.  
15 Q. And you had no idea how big the plants were?  
16 That's your testimony, as you sit here today?  
17 A. Correct.  
18 Q. And was it realistic that they could have  
19 been placed in the oven and burned?  
20 A. As I said, I had personal experience, was  
21 working when that happened. I wasn't part of the SWAT  
22 team that went into that apartment. I was just working  
23 on the street at the time. I knew that that's what  
24 they had done.  
25 Q. Did they recover marijuana in the oven?

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1 A. I don't know.  
2 Q. Well, they knew it had been burned there,  
3 correct?  
4 A. Yes.  
5 Q. Now, let's take a look at Paragraph E, which  
6 is on the next page. That's 31 again.  
7 A. Okay.  
8 Q. EIA, Diversion Devices. Would you please  
9 read the information contained in that subheading into  
10 the record.  
11 A. Paragraph No. 1?  
12 Q. Yes, E1?  
13 A. "Diversion Devices. A diversion device  
14 should be used when you are sure or reasonably sure  
15 there is a subject in a building that you feel is about  
16 to take his or her own life or another person's life."  
17 Do you want me to continue?  
18 Q. Yes.  
19 A. Subparagraph B: "Team leader will announce  
20 when a diversion device will be used. C, point man  
21 will be the one to detonate device; D, all team members  
22 will take proper precautions during 'cook off' -- in  
23 quotations. "After device" - "E, after device is  
24 detonated, a dynamic entry will be made into the room  
25 with a preplanned entry."

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1 Q. What was the preplanned entry into the  
2 bedroom at the Wachsmuth home to the 24th of February  
3 where the flashbang device was detonated?  
4 MS. WESTBY: Object to the form of the  
5 question.  
6 THE WITNESS: There was no preplanned entry  
7 into that room in connection with the diversionary  
8 device.  
9 BY MR. GOSMAN:  
10 Q. Was there any preplanned entry into any room  
11 in that house?  
12 A. Not to the extent that officers were directed  
13 to take specific routes or to turn certain directions  
14 or to go through a door a certain way or anything like  
15 that.  
16 Q. Were the officers instructed when they  
17 cleared a room to announce it to the other officers?  
18 A. Common practice for us, when we were done  
19 inside of a room, would be to announce before we came  
20 out of the room, that the room was clear.  
21 Q. Okay. And I appreciate that, and thank you  
22 for that.  
23 But what I asked was: Is that what happened  
24 that night in the Wachsmuth residence?  
25 MS. WESTBY: No, it isn't.

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1 BY MR. GOSMAN:  
2 Q. Was that part of the planning for the entry  
3 into the Wachsmuth residence?  
4 A. Was part of the plan to announce that the  
5 room was clear?  
6 Q. Yes, by the team members.  
7 A. I don't know that we specifically addressed  
8 it -- that's something that would have been covered,  
9 just in room entry training.  
10 Q. Were clear command signals with the team used  
11 to identify situations, such as clear, move, and  
12 identification of a suspect?  
13 MS. WESTBY: Object to the form of the  
14 question.  
15 MR. THOMPSON: Join.  
16 THE WITNESS: I don't recall discussing any  
17 specific signals.  
18 BY MR. GOSMAN:  
19 Q. Handling of suspects, was that specifically  
20 discussed?  
21 A. Yes.  
22 Q. That's the important part of any dynamic  
23 entry, would you agree with me?  
24 MS. WESTBY: Object to the form.  
25 THE WITNESS: It's certainly a part of it.

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1 BY MR. GOSMAN:  
2 Q. Well, you're using the dynamic entry because  
3 of the threat of suspects?  
4 A. That's within reason.  
5 Q. Yes. And it's really the most important  
6 reason that you have for being there is the threat of  
7 dangerous suspects, correct?  
8 MR. THOMPSON: Objection as to form.  
9 THE WITNESS: Again, that's a reason.  
10 BY MR. GOSMAN:  
11 Q. All right. So let's go ahead and take a  
12 minute here and jump ahead to Exhibit 10. I wish you  
13 would have kept your finger in that page.  
14 A. I've got these pages in here.  
15 Q. Okay. Thank you.  
16 First of all, is this your entry plan?  
17 A. No.  
18 Q. What is it?  
19 A. These are notes that someone took.  
20 Q. You didn't take them?  
21 A. No. That's not my handwriting.  
22 Q. Okay. Do we have any idea whose handwriting  
23 it is?  
24 A. Yes.  
25 Q. Whose?

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1 A. Marrisa Torczon. She's a dispatcher.  
2 Q. Was she called into the planning meeting?  
3 A. She was there.  
4 Q. Did you ask her to take notes to prepare the  
5 entry plan or document the entry plan?  
6 A. I didn't specifically ask her. I'm not sure  
7 who did.  
8 Q. Have you seen those notes before?  
9 A. I think I did see her taking notes on a --  
10 like a yellow tablet. I don't recall seeing this  
11 before today, though.  
12 Q. Okay. I want you to take a look at it, and I  
13 want you to tell me if it is -- if it does, in fact,  
14 document the information you covered in the planning  
15 phase of the entry into the Wachsmuth home.  
16 MS. WESTBY: Object to form.  
17 THE WITNESS: It looks like shorthand notes  
18 from our discussion.  
19 BY MR. GOSMAN:  
20 Q. Okay. But you didn't direct her to prepare  
21 or document your entry plan?  
22 A. No, I did not.  
23 Q. And you didn't prepare a written entry plan?  
24 MR. THOMPSON: Objection as to form.  
25 THE WITNESS: Not on paper.

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1 BY MR. GOSMAN:  
2 Q. Well, when you say "not on paper," where was  
3 it prepared -- I assume by that you're saying that you  
4 prepared an entry plan, but you didn't prepare it on  
5 paper; am I correct?  
6 A. Yes.  
7 Q. All right. So where was it prepared?  
8 A. As I said earlier, on the dry erase boards  
9 downstairs.  
10 Q. So what did the dry erase boards contain?  
11 What information?  
12 A. Sketch of what we knew of the layout of the  
13 house. What officers were going to be where.  
14 Q. That information is also apparently --  
15 A. Some of it is on this sheet also.  
16 Q. Since this is the only document we have,  
17 what's missing from the entry plan that you prepared on  
18 the chalkboard -- or the dry erase board?  
19 A. I don't know.  
20 Q. You don't know?  
21 A. No.  
22 Q. Well, take a minute and look at it. Is there  
23 anything important about the planning of that mission  
24 that night that is not on that document?  
25 MS. WESTBY: Object to the form of the

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1 question.  
2 MR. THOMPSON: Join.  
3 THE WITNESS: I can't answer that. I don't  
4 have the plan to compare it with.  
5 BY MR. GOSMAN:  
6 Q. Well, I want you to take a minute and go  
7 through your mind mentally. You've had time to think  
8 about this.  
9 What elements of the entry plan did you  
10 describe to the officers that are not on this document?  
11 MR. THOMPSON: Objection as to form.  
12 MS. WESTBY: Join.  
13 THE WITNESS: Again, I just -- I couldn't say  
14 for sure.  
15 BY MR. GOSMAN:  
16 Q. All right. Have you taken enough time to  
17 satisfy yourself that you just don't know?  
18 A. I can't say for certain that this -- that  
19 everything that's on this piece of paper was exactly  
20 what we had discussed and what I had put on the dry  
21 erase boards.  
22 Q. Okay. All right. We'll take up that  
23 question in a moment.  
24 But is there anything that is missing from  
25 the plan that you prepared that night --

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1 A. I don't remember what I wrote on the board a  
2 year-and-a-half ago.  
3 Q. Well, you know what's necessary to put a  
4 SWAT-type entry together?  
5 MR. THOMPSON: I'm going to object the  
6 witness not to answer. You've asked it three different  
7 times now, and he's told you he doesn't remember. What  
8 else do you want from him?  
9 MR. GOSMAN: Let's have him resort to his  
10 training and experience in performing SWAT-type  
11 entries.  
12 BY MR. GOSMAN:  
13 Q. I want you to tell me if there's anything  
14 that is missing from that document that would or should  
15 have been discussed that night in planning the  
16 operation.  
17 MR. THOMPSON: Objection as to form.  
18 MS. WESTBY: It's precisely the same  
19 question.  
20 BY MR. GOSMAN:  
21 Q. What is missing?  
22 A. All kinds of stuff.  
23 Q. Well, I only care about the important things.  
24 MS. WESTBY: Yeah.  
25 MR. THOMPSON: I'm going to object as to

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1 relevance. He's told you there was a dynamic entry or  
2 a plan that was on dry erase board. I don't know what  
3 the relevance is to what was on this tablet and what  
4 wasn't.  
5 MR. GOSMAN: Well, I don't have what was on  
6 the dry erase board, Tom.  
7 MR. THOMPSON: Exactly, and neither does he.  
8 MR. GOSMAN: Well, he planned the raid. I  
9 didn't. What I have is this document.  
10 MR. THOMPSON: I understand, Counsel. But  
11 he's told you that he can't remember what was on the  
12 dry erase board. So now you're asking him to speculate  
13 and to guess. And I'm not going to put him in a  
14 position being on the stand in federal court subject to  
15 that type of speculation and conjecture.  
16 MR. GOSMAN: I'm not asking him to speculate  
17 and guess about anything.  
18 MR. THOMPSON: You certainly are.  
19 MR. GOSMAN: I'm asking him to resort to his  
20 training and experience and tell me if there's anything  
21 that's missing from this document that was part or  
22 should have been part of the entry plan that night.  
23 THE WITNESS: I'm sure --  
24 MS. WESTBY: Object to the form of the  
25 question.

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1 BY MR. GOSMAN:  
2 Q. Go ahead. We're going to have to try to get  
3 to the bottom of this since we don't have an entry  
4 plan.  
5 MS. WESTBY: Well, why don't you ask him what  
6 he recalls about the entry plan instead of asking him  
7 what is not on or on some document that he is not the  
8 author of.  
9 MR. GOSMAN: Before the witness forgets the  
10 question, can you just answer the question, Officer?  
11 MS. WESTBY: He did. He answered the  
12 question.  
13 THE WITNESS: Again, I'm sure there was more  
14 on the dry erase board than is on this piece of paper.  
15 BY MR. GOSMAN:  
16 Q. Okay. And you've already testified you don't  
17 remember what that was.  
18 So what I've asked you is: Based on your  
19 training and experience, what should be on this page  
20 relative to a SWAT-type entry that is not there?  
21 MS. WESTBY: Okay. Wait just a second. Just  
22 a second.  
23 Again, he is not the author of this document.  
24 That's how you're phrasing your questions. Asked and  
25 answered over and over again. Badgering.

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1 Argumentative.  
2 MR. THOMPSON: Join.  
3 MS. WESTBY: Enough is enough.  
4 MR. GOSMAN: All right. The witness answered  
5 the question, so that's fine. He doesn't know.  
6 BY MR. GOSMAN:  
7 Q. Okay. Well, we're going to go back to  
8 Exhibit 29, Officer. Okay. Handling suspects. I  
9 think we sort of touched on that subject.  
10 And I believe that you indicated that you --  
11 there were instructions that evening regarding the  
12 handling of -- the handling of suspects -- I'm sorry --  
13 correct?  
14 A. We did discuss who would be designated to  
15 handle suspects.  
16 Q. And who was that?  
17 A. To the best of my recollection, that would  
18 have been Kent and McCaslin.  
19 Q. They didn't even come in the door first.  
20 A. Nope.  
21 Q. In fact, they deployed the diversion device,  
22 correct, outside the house?  
23 A. Correct.  
24 Q. How are they going to see suspects if they  
25 are outside the house when the entry team breaks in and

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1 goes into the house?  
2 MS. WESTBY: Object to the form of the  
3 question.  
4 THE WITNESS: They were not equipped with  
5 Long guns, only pistols. It's a lot easier to holster  
6 a pistol and place two hands on a suspect than dangle  
7 your rifle between you.  
8 BY MR. GOSMAN:  
9 Q. So what were you going to do, just leave the  
10 suspects sitting in the home until Kent and McCaslin  
11 finished their diversion tactics and came back in the  
12 house and gathered them up?  
13 MS. WESTBY: Object to the form of the  
14 question.  
15 MR. THOMPSON: Go ahead.  
16 THE WITNESS: When the entry team encountered  
17 someone, if you encountered someone, then you stayed  
18 with that person until the arrest team could come in  
19 and handcuff them.  
20 BY MR. GOSMAN:  
21 Q. Okay. And under Paragraph 4 of the training  
22 materials that we're looking at on Exhibit 29, it  
23 indicates with regard to handling suspects, must stop  
24 any threat now exclamation point. Arrest immediately  
25 and remove suspects, correct?

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1 A. It says "arrest immediately and remove."  
2 Q. Okay. And it's just simply true that you  
3 weren't able to do that if you had an arrest team that  
4 was outside the house when the entry team came into the  
5 house?  
6 MS. WESTBY: Object to the form of the  
7 question.  
8 MR. THOMPSON: Join.  
9 THE WITNESS: That's not correct.  
10 BY MR. GOSMAN:  
11 Q. Why not?  
12 A. 'Cause they weren't that far away.  
13 Q. They weren't with the entry team though; is  
14 that true?  
15 A. I don't know.  
16 Q. When the entry team went into the house, you  
17 don't know whether McCaslin and Kent were there with  
18 you?  
19 A. I don't know how quickly they were able to  
20 follow us in.  
21 Q. Well, all right. You just said, "follow us  
22 in." They weren't with you when you entered the home,  
23 correct?  
24 MS. WESTBY: Object to the form of the  
25 question.

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1 THE WITNESS: I can testify to what I saw,  
2 and they were not in front of me.  
3 BY MR. GOSMAN:  
4 Q. All right. Where were you in that order of  
5 things?  
6 A. I would have been one of the first two or  
7 three officers. I know I wasn't the first officer.  
8 But I would have been towards the front.  
9 Q. And who was first?  
10 A. The best I can recall that would have been  
11 Chapman, because he was the one that was knocking on  
12 the door.  
13 Q. And who was second?  
14 A. I don't recall.  
15 Q. Would it have been Miner with the ram?  
16 MR. THOMPSON: Object as to the form. Asked  
17 and answered. He doesn't recall.  
18 THE WITNESS: I just don't know. I don't  
19 think so, though.  
20 BY MR. GOSMAN:  
21 Q. Was it the duty of the first officer that  
22 entered the home -- or the first officer that  
23 encountered the suspect to stay with the suspect until  
24 McCaslin and Kent arrived?  
25 A. Not necessarily.

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1 Q. You didn't have any directive as to how the  
2 team was to handle the suspect when they entered the  
3 house?  
4 A. You have to be flexible.  
5 Q. So is your answer, I didn't have a specific  
6 assignment that the first officer that encountered the  
7 suspect was to take control of the suspect?  
8 MS. WESTBY: Object to the form the question.  
9 THE WITNESS: That's not what I said.  
10 BY MR. GOSMAN:  
11 Q. Well, that's my question, though.  
12 A. I didn't know exactly where we were going to  
13 encounter anyone.  
14 Q. True. And that's true in every one of these  
15 cases, correct?  
16 A. Yes.  
17 Q. And it's also true that the first officer  
18 that encounters the suspect is normally the officer  
19 that takes control of the suspect?  
20 A. Until someone relieves them.  
21 Q. All right. So was that the directive that  
22 was given that night?  
23 A. I don't recall specifically.  
24 Q. Well, where was Tricia Wachsmuth when you  
25 entered -- when you entered the home?

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1 A. In the living room.  
2 Q. Okay. And so that we don't beat around the  
3 bush about this, she was sitting on the couch just next  
4 to the door, wasn't she?  
5 A. I don't remember.  
6 Q. In any event, the first officer that entered  
7 the house, would have been the first officer to  
8 encounter the suspect, correct?  
9 A. That makes sense.  
10 Q. Did that officer take control of Tricia  
11 Wachsmuth?  
12 A. I don't know, because I continued.  
13 Q. Did you see Tricia Wachsmuth?  
14 A. I don't recall seeing her initially. I was  
15 aware that there was someone in the living room,  
16 another officer was dealing with her. I continued to  
17 my -- I just continued on clearing the residence.  
18 Q. Okay. Well, you were the third one in, so it  
19 had to be either --  
20 A. I didn't say I was the third one in.  
21 Q. You didn't?  
22 A. No. I said I was towards the front.  
23 Q. Towards the front?  
24 A. I would have been towards the front. I don't  
25 know if I was second or third or fourth. I don't think

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1 I would have been any farther back than that. But I  
2 can't say for sure I was number two or number three.  
3 Q. Did anybody push themselves around you to get  
4 in the door?  
5 A. No.  
6 Q. When you went in the door, an officer had  
7 already taken control of Tricia; is that correct, or  
8 was standing by her?  
9 A. I believe so.  
10 Q. Was she arrested immediately?  
11 MR. THOMPSON: Objection as to form.  
12 THE WITNESS: Not by me.  
13 BY MR. GOSMAN:  
14 Q. By anyone?  
15 A. I didn't hear anyone say "you're under  
16 arrest."  
17 Q. Was she removed immediately?  
18 A. No.  
19 Q. Okay. Other than yourself, did anyone who  
20 participated in the execution of the search warrant on  
21 the Bret and Tricia Wachsmuth home have SWAT training?  
22 MS. WESTBY: Object to the form of the  
23 question.  
24 MR. THOMPSON: Join.  
25 THE WITNESS: I don't know that they had SWAT

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1 training by that name.  
2 BY MR. GOSMAN:  
3 Q. You were the team leader that evening,  
4 correct?  
5 A. Yes.  
6 Q. And you called -- you selected the officers  
7 for this operation, correct?  
8 A. Yes.  
9 Q. Did you know the training background of the  
10 officers you selected for this dynamic entry?  
11 A. The ones on the entry team I was very  
12 familiar with.  
13 Q. How about the ones that were involved with  
14 the deployment of the flashbang, did you know what  
15 their training was?  
16 A. I knew that they had been trained.  
17 Q. Trained in the deployment of the flashbang?  
18 A. Yes.  
19 Q. Did you train them?  
20 A. I did not personally train them.  
21 Q. How did you know they had been trained?  
22 A. They had attended the training that Pechtel  
23 held here before I was here.  
24 Q. How did you know that?  
25 A. We talked about it.

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1 Q. And that -- the training that Pechtel had, if  
2 you will, is the Countermeasures Tactical Institute  
3 training that he provides, correct?  
4 A. Yes.  
5 (Exhibit 31 identified)  
6 BY MR. GOSMAN:  
7 Q. Let's go ahead and take a minute and look at  
8 Exhibit 31. And let's see, we have -- we have Kent and  
9 McCaslin on -- I think it starts to the third or fourth  
10 page of that. Yeah, third page, starting on the third  
11 page.  
12 A. Okay.  
13 Q. Up first, did you assign Chretien -- sorry --  
14 McCaslin, Officer Chretien. Did you assign McCaslin  
15 the job of deploying the flashbang device?  
16 A. Yes.  
17 Q. And you assigned Kent the duty of using the  
18 rake, correct?  
19 A. Yes.  
20 Q. All right. Did you have any discussions with  
21 Kent about McCaslin's deployment of the device?  
22 A. We did talk about how we were going to deploy  
23 the device, the three of us.  
24 Q. Very good. What did you say?  
25 A. That if we were going to use it, Kent would

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1 break the window, McCaslin would deploy the device  
2 inside the northeast bedroom.  
3 Q. That was it?  
4 A. Yep. We talked about how you deploy a  
5 flashbang.  
6 Q. What did you say?  
7 A. Look in the area you're going to put it and  
8 then put it there.  
9 Q. Let's go ahead and take a look at McCaslin's  
10 training. And that is Bates-stamped 1220. It's LGLP  
11 Wachsmuth 1220.  
12 A. Okay.  
13 Q. So what course specifically did McCaslin take  
14 that would have involved flashbang training?  
15 MS. WESTBY: Object to the form of the  
16 question.  
17 MR. THOMPSON: Join.  
18 THE WITNESS: I wasn't here when he took it.  
19 BY MR. GOSMAN:  
20 Q. Well, I know that. But I'm saying what --  
21 you told me that he took a course?  
22 A. Uh-huh.  
23 Q. In the course he used a flashbang and was  
24 trained in it. So which course was it?  
25 MR. THOMPSON: Objection as to form.

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1 MS. WESTBY: Object to the form of the  
2 question.  
3 THE WITNESS: It would have been one of the  
4 classes that Pechtel taught.  
5 BY MR. GOSMAN:  
6 Q. Okay. Well, let's see what classes that  
7 Pechtel taught that Officer McCaslin participated in  
8 prior to February 24, 2009. I see one, Patrol Tactical  
9 Response. Do you see another one?  
10 A. I don't.  
11 Q. So it would have had to have been in the body  
12 of the Tactical Control Response Training, correct?  
13 MS. WESTBY: Object to the form of the  
14 question. Honestly.  
15 THE WITNESS: How can I answer that? I  
16 wasn't there.  
17 BY MR. GOSMAN:  
18 Q. Officer, you told me that Pechtel was the one  
19 that trained him.  
20 MS. WESTBY: Object to the form of the  
21 question. You asked him to speculate about where he  
22 received this training. You're asking him about  
23 another officer's training.  
24 MR. GOSMAN: I hope he's not speculating.  
25 MS. WESTBY: Well, I'm sure he said that it

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1 must have been.  
2 MR. GOSMAN: Okay. All right. Let's try to  
3 get back to the deposition, if we can.  
4 MS. WESTBY: If you don't want to depose all  
5 of the officers, then I have no problem with you asking  
6 this officer if he knows about their training. But if  
7 you're going to depose them, ask them about their  
8 training.  
9 MR. GOSMAN: Thank you. I'll take that under  
10 consideration.  
11 BY MR. GOSMAN:  
12 Q. Okay. Officer, you didn't want to send  
13 someone out that night to deploy a flashbang device  
14 that had never done it before, wouldn't that be fair to  
15 say?  
16 MS. WESTBY: I'll object to the form of the  
17 question.  
18 MR. THOMPSON: Join.  
19 BY MR. GOSMAN:  
20 Q. Go ahead.  
21 A. Ideally.  
22 Q. So there are circumstances where you may send  
23 somebody out who's never been trained to deploy a  
24 flashbang?  
25 A. That was not the question.

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1 MS. WESTBY: Object to the form of the  
2 question.  
3 BY MR. GOSMAN:  
4 Q. You said "ideally."  
5 A. You said, would I send someone who had never  
6 deployed a flashbang, not who had never been trained.  
7 Q. Yes.  
8 A. The follow-up question referred to training.  
9 Which is it? Do you want to know if they had been  
10 trained, or do you want to know if they had ever done  
11 it?  
12 Q. Well, we're talking about training at this  
13 point.  
14 A. Okay.  
15 Q. So let's stick with that. And I think that  
16 we don't need to revisit this subject from top to  
17 bottom. It's been established that you understood that  
18 McCaslin had training --  
19 A. Correct.  
20 Q. -- in this device. And that his training  
21 would have been from Doug Pechtel?  
22 A. Correct.  
23 Q. Who does the Countermeasures Tactical,  
24 Incorporated training seminars?  
25 A. Correct.

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1 Q. And the Patrol Tactical Response Training  
2 program there at 9/3/2005 for McCaslin is a course that  
3 that gentleman teaches, correct?  
4 A. Yes.  
5 Q. That is the course that he teaches, correct?  
6 A. Yes.  
7 MS. WESTBY: Object to the form of the  
8 question.  
9 BY MR. GOSMAN:  
10 Q. I don't care about this. Sorry.  
11 And do you see any other courses that Pechtel  
12 would have taught officer McCaslin -- no, nevermind.  
13 Do you know whether the 50-hour course that  
14 has been identified as the Patrol Tactics Response  
15 course contained -- or involves training with a --  
16 actual training with a diversionary device?  
17 A. Not particularly.  
18 Q. Is that to say, then, that you really didn't  
19 know whether Officer McCaslin had training in the  
20 deployment of a diversionary device?  
21 A. No.  
22 MS. WESTBY: Object to the form of the  
23 question.  
24 BY MR. GOSMAN:  
25 Q. How did you know that he had that training?

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1 A. I asked him.  
 2 Q. Oh, you asked him that night?  
 3 A. Yes.  
 4 Q. So you didn't know until you asked him?  
 5 MS. WESTBY: Object to the form of the  
 6 question.  
 7 BY MR. GOSMAN:  
 8 Q. Is that correct?  
 9 A. Yes.  
 10 Q. Yes, you didn't know until you asked him?  
 11 This may just be me on this one, I'll give you that.  
 12 A. Yes.  
 13 Q. Okay. Thank you.  
 14 MR. THOMPSON: Sounds like the dialogue from  
 15 Forest Gump.  
 16 MR. GOSMAN: I'll take ownership of that one  
 17 and probably a lot of other things, too.  
 18 BY MR. GOSMAN:  
 19 Q. Okay. To the best of your recollection, what  
 20 did Officer McCaslin tell you that night about his  
 21 training with the diversionary device?  
 22 A. He said he had flashbang training before.  
 23 Q. Had the officers you selected or who  
 24 participated in the warrant served on the plaintiff's  
 25 home -- and I'm going to refer to the entry team and

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1 the diversion team. And I'm not too concerned about  
 2 your perimeter fellows -- had they ever conducted a  
 3 joint operation together before?  
 4 MS. WESTBY: Object to the form of the  
 5 question.  
 6 THE WITNESS: I don't know.  
 7 BY MR. GOSMAN:  
 8 Q. You don't know?  
 9 A. No.  
 10 Q. And you didn't know on the 24th of  
 11 February 2009; is that true?  
 12 A. Yes.  
 13 Q. Does that include training exercises as a  
 14 team?  
 15 A. Nope.  
 16 Q. Had the officers involved in the warrant  
 17 service on the Wachsmuth home ever conducted joint  
 18 training exercises as a team before?  
 19 A. Yes.  
 20 Q. When?  
 21 A. I don't recall the specific date. But I know  
 22 that we used the old high school.  
 23 Q. Was it a joint operation?  
 24 A. When you say "joint," do you mean members of  
 25 the Powell Police Department with other members of the

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1 Powell Police Department, because that was the only  
 2 joint aspect to this operation.  
 3 Q. Okay. That's fine. That answers that  
 4 question.  
 5 Was that training exercise documented?  
 6 A. I don't know. It would have been one of our  
 7 Friday trainings.  
 8 Q. Okay. You do document your Friday trainings,  
 9 do you not?  
 10 A. We do. The instructor does.  
 11 (Exhibit 35 identified)  
 12 BY MR. GOSMAN:  
 13 Q. Okay. Well, let's go ahead and take a look  
 14 at them. And that's Exhibit 35. It looks like we've  
 15 got about five years' worth of those in-service  
 16 training records.  
 17 A. Okay.  
 18 Q. You might need a minute.  
 19 A. I think I found it, it starts with 4th  
 20 Quarter 2005?  
 21 Q. Yes, sir.  
 22 A. Okay. Did I miss something? Is there a  
 23 question, or you just want me to look at them?  
 24 Q. No, there's a question.  
 25 A. I'm sorry.

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1 Q. We're looking for --  
 2 A. Oh, that specific one. I'm sorry.  
 3 Q. As a matter of fact, let's broaden it up.  
 4 I'm looking for any evidence that the Powell Police  
 5 Department trained as a unit.  
 6 A. Okay.  
 7 Q. In connection with dynamic entry tactical  
 8 response, that kind of thing.  
 9 MR. THOMPSON: Other than the officer's  
 10 testimony under oath?  
 11 MR. GOSMAN: What was that? An objection?  
 12 MR. THOMPSON: No.  
 13 MR. GOSMAN: Significance --  
 14 MR. THOMPSON: It's a misstatement of what's  
 15 already been testified to. He stated that they  
 16 trained.  
 17 MR. GOSMAN: And he also stated it's  
 18 documented and so, you know, let's just go ahead --  
 19 MR. THOMPSON: Counsel, he did not state that  
 20 it was documented.  
 21 MR. GOSMAN: Well, thank you for that.  
 22 MR. THOMPSON: He stated that those trainings  
 23 are documented by the instructor is what his testimony  
 24 was.  
 25 MR. GOSMAN: I see. And there's a difference

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1 there. Well, we'll parch that out later.  
2 THE WITNESS: Would you like me just to read  
3 it as I see it?  
4 BY MR. GOSMAN:  
5 Q. Yeah.  
6 A. December of -- December 9th search warrants.  
7 Q. Search warrants, 12 of '09?  
8 A. 12/9 of '05.  
9 Q. Search warrants, is that how -- this just  
10 says "search warrants," are you telling me this  
11 documents a dynamic team practice in the execution of a  
12 SWAT-type entry?  
13 MR. THOMPSON: Objection as to form.  
14 MS. WESTBY: Join.  
15 THE WITNESS: I wasn't there.  
16 BY MR. GOSMAN:  
17 Q. All right.  
18 A. You asked me to identify training.  
19 Q. No, I'm asking you to identify SWAT-type  
20 training in dynamic entry.  
21 A. That's not how you phrased it.  
22 MS. WESTBY: That isn't.  
23 BY MR. GOSMAN:  
24 Q. Well, I apologize. Let's go forward --  
25 A. Do you want me to identify things, or do you

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1 want to identify things? I identified search warrants.  
2 Q. We have a misunderstanding about the  
3 question. Because I don't care about search warrants.  
4 I care about dynamic team entry into a home.  
5 MR. THOMPSON: And, Counsel, in fairness,  
6 that wasn't the question that you asked. You asked him  
7 whether or not they had trained jointly as a team.  
8 MR. GOSMAN: I'm sorry. I could have made  
9 that mistake, and that's certainly possible.  
10 BY MR. GOSMAN:  
11 Q. So if I did, I apologize to you, Officer, and  
12 I appreciate the opportunity to clear that up.  
13 A. Would you like me to go through and identify  
14 what I identified as that type of training?  
15 Q. Yes.  
16 A. Okay. Again, 12/9 of '05, search warrants.  
17 June of '06, high-risk warrant service And search  
18 warrants is a separate entry. November of '06, active  
19 threat response. February 27th of '06, single-room  
20 clearing. March 20th of '06, building clearing,  
21 cuffing, and searching. April of '06, squad movement.  
22 May of '06, squad movement, weapon retention.  
23 Q. You know, I hate to admit this, but I'm not  
24 following your page. What page are you on?  
25 A. 1818. It's sideways.

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1 Q. Okay.  
2 A. Okay. The next one would be June of '06,  
3 barricaded gunman. July of '06, barricaded gunman  
4 scenario. August of '06, multiroom clearing.  
5 September of '06, multiroom clearing. That's all I  
6 see.  
7 Q. Okay. Did you -- did you participate in any  
8 one of these classes?  
9 A. No.  
10 Q. Now, you've told me that you understood that  
11 Officer McCaslin had training in the deployment of a  
12 noise distraction device. Had he ever practiced with  
13 such a device before? Did you know of that?  
14 A. He said he was trained in the deployment of a  
15 flashbang.  
16 Q. So you never were involved in any practice  
17 with him involving that device?  
18 A. I believe I was when we did the training in  
19 the old high school. Again, I didn't see that listed  
20 here.  
21 Q. Did you deploy a flashbang in the old high  
22 school?  
23 A. It would have been just the body, not the  
24 actual charge.  
25 Q. Do you remember doing that?

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1 A. Yes.  
2 Q. And have you received training in the  
3 deployment after a noise distraction device?  
4 A. Yes.  
5 Q. Describe your training.  
6 A. Initially, I believe it was in-service SWAT  
7 training in College Park. Was presented by one of the  
8 other officers that attended the DEF-TEC weeklong, less  
9 lethal N.F.D.D. noise blast diversion device.  
10 It's one of mine buzzing. Sorry.  
11 We had one officer that had been to the  
12 school. I knew that I had training on it from him  
13 before I was on the team. When I was on the team, we  
14 had practiced flashbangs that we used during training.  
15 Also, when I was on the team we sent another officer to  
16 that course. When he came back, he updated us on all  
17 the different things he'd learned.  
18 Q. And that was a one-week course, did you say?  
19 A. The course that they attended through DEF-TEC  
20 was a weeklong course, yes.  
21 Q. Did you attend that course?  
22 A. No.  
23 Q. Did you practice with the College Park SWAT  
24 team deploying flashbang devices?  
25 A. Yes.

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1 Q. How often?  
2 A. I'm not sure. Probably not every month.  
3 Several times a year.  
4 Q. Did they have anything like that set up in  
5 Powell for training using the flashbang device?  
6 MR. THOMPSON: Objection as to form.  
7 MS. WESTBY: Join.  
8 THE WITNESS: Anything like the way that we  
9 trained on the SWAT team in College Park?  
10 BY MR. GOSMAN:  
11 Q. Yes.  
12 A. No.  
13 (Exhibit 7 identified)  
14 BY MR. GOSMAN:  
15 Q. Okay. Let's turn to Exhibit 7. And this is  
16 the product and labeling documentation relative to the  
17 DEF-TEC 25, I believe, it's called.  
18 A. Yeah.  
19 Q. Have you seen this product label before?  
20 A. I think so.  
21 Q. And do you see the caption at the top of the  
22 page?  
23 A. To only be used by law enforcement?  
24 Q. Yes.  
25 A. Uh-huh.

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1 Q. Why don't you go ahead and read that.  
2 A. "To only be used by law enforcement,  
3 corrections, or military personnel who have  
4 successfully completed a training program in the use of  
5 distraction devices."  
6 Q. Would you agree that in order to deploy this  
7 device properly, a -- only law enforcement,  
8 corrections, or military personnel should do it who  
9 have successfully completed a training program in the  
10 use of distraction devices?  
11 MR. THOMPSON: Objection as to form.  
12 BY MR. GOSMAN:  
13 Q. Let me strike that and ask you if you agree  
14 with the language that's contained in that legend at  
15 the top of the label on Exhibit 7?  
16 A. I agree only trained personnel should use  
17 them.  
18 Q. And it does say by trained personnel, the  
19 legend says, "those who have successfully completed a  
20 training program in the use of the device should use  
21 it," correct?  
22 A. It does say that.  
23 Q. Let's go ahead and take a look at the -- I  
24 think it's the fourth page of this same exhibit. And  
25 this has another legend that is down there sort of the

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1 at the bottom of the page. It's in a box, says  
2 "warning." Could you read that into the record for me,  
3 please?  
4 A. "Warning: This product is to be used only by  
5 authorized and trained law enforcement, correction, or  
6 military personnel. This product may cause serious  
7 injury or death to you or others. This product may  
8 cause serious damage to property. Handle, store, and  
9 use with extreme care and caution. Use only as  
10 instructed."  
11 Q. Okay. Anything in that that you disagree  
12 with?  
13 A. No.  
14 Q. And then over on the left-hand side of the  
15 page, there's some information under the heading  
16 application.  
17 A. Uh-huh.  
18 Q. And I'm referring to the third paragraph  
19 there. "It is recommended that the immediate area for  
20 deployment be visually affirmed." I want you to take a  
21 second and read that. And why don't we go ahead and  
22 have you read it into the record?  
23 A. "It is recommended that the immediate area  
24 for deployment be visually affirmed to be clear of  
25 person or persons and that the device is delivered so

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1 that it remains free of obstructions or walls. The  
2 cleared area for deployment should be 5 to 6 feet  
3 around which the device is expected to come to rest.  
4 If the device is deployed in such a manner that a wall  
5 or obstruction should block the bottom port, then the  
6 distraction device may move slightly."  
7 Q. Do you disagree with the language that you've  
8 just read into the record there about how the device  
9 should be deployed?  
10 A. I don't disagree with the language that I  
11 just read.  
12 Q. Did you instruct Officer McCaslin with regard  
13 to this information that we've just read?  
14 MR. THOMPSON: Objection as to form.  
15 MS. WESTBY: Join.  
16 THE WITNESS: I didn't read this to him  
17 verbatim.  
18 BY MR. GOSMAN:  
19 Q. Fair enough. But did you discuss this, the  
20 information contained in what we just read to Officer  
21 McCaslin?  
22 MR. THOMPSON: Objection as to form.  
23 MS. WESTBY: Join.  
24 THE WITNESS: Okay. I talked with McCaslin  
25 about deploying the device.

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1 BY MR. GOSMAN:  
2 Q. Did you tell him that he needed to look where  
3 he was throwing it?  
4 A. I told him to look before he placed it, not  
5 throw it.  
6 Q. In this case, he had to throw in because it  
7 was going through a window, correct?  
8 A. No.  
9 Q. Okay. So what else could he have down?  
10 A. Place it inside the window.  
11 Q. Just dropped it?  
12 MS. WESTBY: Object to the form of the  
13 question.  
14 BY MR. GOSMAN:  
15 Q. Did you instruct him to just drop it inside  
16 the window?  
17 A. No. I told him just what I told you before.  
18 Q. Which was to place -  
19 A. Look, place.  
20 Q. Okay. So it didn't matter to you whether he  
21 threw it or dropped it; you just wanted to make sure he  
22 looked and saw where it was going, correct?  
23 MR. THOMPSON: Objection as to form.  
24 MS. WESTBY: Objection to form.  
25 THE WITNESS: I did say specifically not to

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1 throw it.  
2 BY MR. GOSMAN:  
3 Q. You did tell him specifically not to throw  
4 it?  
5 A. Not to throw it.  
6 Q. So what does that mean? Does that mean he  
7 was to simply place it in the room by dropping it?  
8 MS. WESTBY: Object to the form of the  
9 question.  
10 MR. THOMPSON: Join.  
11 THE WITNESS: I couldn't tell exactly what to  
12 do. I wasn't going to be there. I trusted his  
13 judgment.  
14 BY MR. GOSMAN:  
15 Q. Okay.  
16 A. He understood the correct way to deploy a  
17 flashbang device.  
18 Q. But you told him not to throw it?  
19 A. Correct.  
20 (Exhibit 8 identified)  
21 BY MR. GOSMAN:  
22 Q. All right. Okay. Let's go ahead and take a  
23 look at Exhibit No. 8. And I'm going to ask you if  
24 you've seen this document before?  
25 A. No.

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1 Q. You'll notice it has the heading  
2 "Countermeasures Tactical, Inc.," correct?  
3 A. Yes.  
4 Q. I want you to take a look -- and frankly,  
5 we're focusing on the second page because the second  
6 page deals with standards for deploying the device  
7 through a window.  
8 A. Okay.  
9 Q. Could you run through those standards for me  
10 on that second page of the exhibit, and tell me whether  
11 or not those standards were met based on -- not what  
12 you saw, but on what you discussed with the officers in  
13 terms of how the device was to be deployed?  
14 MS. WESTBY: Object to the form of the  
15 question.  
16 MR. THOMPSON: Join.  
17 THE WITNESS: Okay, I didn't discuss with  
18 McCaslin exactly how he was going to hold it in his  
19 hand.  
20 BY MR. GOSMAN:  
21 Q. Okay.  
22 A. I didn't go over this list with him. This is  
23 the first time I've seen it.  
24 Q. Okay. But you -- would you agree that you  
25 told him that the device should be placed while he was

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1 looking at the desired location?  
2 MS. WESTBY: Object to the form of the  
3 question.  
4 MR. THOMPSON: Join.  
5 THE WITNESS: We discussed that.  
6 (Exhibit 9 identified)  
7 MR. GOSMAN:  
8 BY MR. GOSMAN:  
9 Q. And now, let's take a look at Plaintiff's  
10 Exhibit 9. Have you ever seen this document before?  
11 A. No.  
12 Q. Okay. It has certain headings and one of the  
13 headings -- the second heading under -- on paragraph --  
14 or on Exhibit 9 is identified as "The Primary Effects  
15 of a Distraction Device." And the second bulleted item  
16 is entitled, "Over pressure-No distraction if children  
17 under 12 years old inside." Do you see that?  
18 A. I do.  
19 Q. Did you learn that from your training?  
20 A. No, I had not.  
21 Q. Did -- had you ever been told that you should  
22 not deploy a distraction device if there were young  
23 children in the room where it was being deployed?  
24 A. No, I had not.  
25 Q. Was it your informing that it was okay to do

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1 that then?  
2 A. Yes.  
3 Q. Okay. Back to Exhibit 10 for a moment. What  
4 was this woman's name that prepared this document?  
5 A. Marrisa Torczon.  
6 Q. Okay. Did she make a comment in that  
7 document regarding the presence of a child in the  
8 residence?  
9 A. There is a notation on the paper.  
10 Q. Okay. What does it say?  
11 A. 10 YOA child.  
12 Q. Is it safe to assume that that means year?  
13 A. Yes. YOA would be.  
14 Q. Year old child?  
15 A. Years of age.  
16 Q. And was that something that was discussed  
17 that night?  
18 A. Absolutely.  
19 Q. All right. So what did you know about the  
20 presence of a ten-year-old child in the residence?  
21 A. First of all, that was an estimation on the  
22 part of Officer Blackmore who was conducting  
23 surveillance.  
24 Q. You accepted it, I assume?  
25 A. He said that it appeared to him that a child

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1 around middle school age, around ten years of age --  
2 that he had seen what he believed was a child enter the  
3 residence with an adult. I can't remember if the adult  
4 was male or female. And that just the adult left in a  
5 vehicle.  
6 Q. This document is not dated, and we don't know  
7 when it was prepared; is that true?  
8 A. True.  
9 Q. Was it ever submitted as part of your  
10 reporting?  
11 A. Not that I'm aware of. Unless it was added  
12 as an attachment, and I'm just not aware of that.  
13 Q. Is there anything on that document that would  
14 identify it as having been -- as containing information  
15 that was available only after the entry was completed?  
16 MR. THOMPSON: Objection as to form.  
17 MS. WESTBY: Join.  
18 THE WITNESS: Not that I see.  
19 BY MR. GOSMAN:  
20 Q. And you do see that the estimate there that  
21 there were 20 to 30 plants?  
22 A. I see that.  
23 Q. Okay. Is that something that was discussed  
24 that night?  
25 A. I don't recall the number of plants being

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1 discussed specifically.  
2 Q. Do you have any reason to doubt that that  
3 information was communicated that night?  
4 MR. THOMPSON: Objection as to form.  
5 MS. WESTBY: Join.  
6 THE WITNESS: I'm not sure where that number  
7 came from.  
8 BY MR. GOSMAN:  
9 Q. Do you see the reference on Exhibit 10 that  
10 everyone gets cuffed?  
11 A. Yes.  
12 Q. Okay. And that's standard procedure,  
13 correct, in that type of entry?  
14 MR. THOMPSON: Objection as to form.  
15 THE WITNESS: That's pretty standard police  
16 procedure for serving a warrant.  
17 BY MR. GOSMAN:  
18 Q. And for serving a dynamic warrant it's even  
19 more important because you want to control the  
20 suspects, isn't it?  
21 MS. WESTBY: Object to form.  
22 MR. THOMPSON: Join.  
23 THE WITNESS: I don't think it's more or less  
24 important. Officers are injured by nondynamic entry  
25 type situations every day.

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1 BY MR. GOSMAN:  
2 Q. Was Tricia Wachsmuth supposed to have been  
3 handcuffed as soon as she was identified in the house?  
4 A. We didn't know that Tricia Wachsmuth was in  
5 the house.  
6 Q. I'm okay with that. But that isn't what I  
7 asked, Officer.  
8 My question was: Was she supposed to be  
9 handcuffed -- were any suspects in that house supposed  
10 to be handcuffed?  
11 A. Yes.  
12 MR. THOMPSON: Object to the form, compound.  
13 MS. WESTBY: And it's an entirely different  
14 question than you asked the first time.  
15 BY MR. GOSMAN:  
16 Q. Well, Tricia Wachsmuth was in the house,  
17 correct?  
18 A. She was.  
19 Q. We're past that, aren't we?  
20 A. (Witness nods head.)  
21 Q. And was Tricia Wachsmuth, as a suspect in  
22 that house, to have been handcuffed as soon as the  
23 officers saw her?  
24 MR. THOMPSON: Objection as to form.  
25 MS. WESTBY: Join.

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1 THE WITNESS: No  
2 BY MR. GOSMAN:  
3 Q. No?  
4 A. No, not as you stated it.  
5 Q. Okay. Well, tell me how it was to have been?  
6 A. As I explained to you before, the entry team  
7 would secure her in place. That means just keeping an  
8 eye on her.  
9 Q. With a gun pointed at her?  
10 A. Until the arrest team came in to handcuff  
11 her.  
12 Q. You said, "keep an eye on her," and you sort  
13 of used your hands to indicate that a weapon would be  
14 at least pointed in her direction?  
15 A. No, I didn't.  
16 MR. THOMPSON: Objection as to form.  
17 Mischaracterizes the witness's testimony.  
18 MS. WESTBY: Objection.  
19 MR. THOMPSON: And argumentative.  
20 BY MR. GOSMAN:  
21 Q. So you've got a dynamic entry. You're  
22 concerned about threats to officer safety, and the  
23 officer that took control of Tricia Wachsmuth or anyone  
24 in the house was simply to keep an eye on them until  
25 the other officers could come in and --

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1 A. They were to do what would be reasonable. I  
2 wasn't in every place --  
3 Q. I understand that.  
4 A. -- to make decisions for every officer. It  
5 was up to them to determine what kind of a threat a  
6 person was. If they thought they needed to point their  
7 weapon at someone, then by all means, they should have.  
8 Whether anyone pointed their weapon at Tricia Wachsmuth  
9 and for how long, I don't know. I can testify as to  
10 what I did. I did not point my weapon at Tricia  
11 Wachsmuth ever.  
12 BY MR. GOSMAN:  
13 Q. Do you know how long it was before Tricia  
14 Wachsmuth was handcuffed and taken outside?  
15 A. It would have been after she went downstairs.  
16 Q. About how long was that?  
17 A. Not very long. I have no idea.  
18 Q. Ten minutes?  
19 A. I don't know.  
20 Q. That's another statement on Exhibit 10 that  
21 indicates that handguns were loaded everywhere in the  
22 house; do you see that statement?  
23 A. I see that.  
24 Q. And was that a comment that was made that  
25 evening?

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1 MS. WESTBY: Object to the form of the  
2 question.  
3 MR. THOMPSON: Join.  
4 BY MR. GOSMAN:  
5 Q. And I'm talking about the planning stage of  
6 the operation.  
7 A. I understand. Some of the information that  
8 we received was that there were loaded weapons  
9 throughout the house.  
10 Q. And I assume that that was documented in the  
11 information you took from the confidential informant  
12 and submitted to the Court in the form of the  
13 affidavits for probable cause in the affidavit for  
14 search warrant?  
15 MS. WESTBY: Object to the form of the  
16 question.  
17 THE WITNESS: I'd have to speculate. I  
18 didn't talk to the confidential informant.  
19 BY MR. GOSMAN:  
20 Q. Okay. That was Officer Miner?  
21 A. Yes, sir.  
22 Q. Now, would you agree with me, Officer, that  
23 in Powell, Wyoming, many people have loaded guns in  
24 their house?  
25 MS. WESTBY: Object to the form of the

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1 question.  
2 THE WITNESS: I don't know.  
3 BY MR. GOSMAN:  
4 Q. Would you agree with me that most people who  
5 keep guns for self-protection have them loaded, at  
6 least ammunition in the magazine?  
7 MS. WESTBY: Object to the form of the  
8 question.  
9 BY MR. GOSMAN:  
10 Q. Based on your experience.  
11 A. I don't know what other people do.  
12 Q. Do you keep your handguns loaded in the  
13 house, shells at least in the magazine?  
14 A. I keep my duty weapon loaded, yes.  
15 Q. Do you have any other handguns in the house?  
16 A. Yes.  
17 Q. Are they loaded? Do they have shells in the  
18 magazine?  
19 A. Most of the time not.  
20 Q. Would the fact that an individual had a  
21 loaded gun in his house standing alone justify the use  
22 of a SWAT team?  
23 MR. THOMPSON: Objection as to form.  
24 MS. WESTBY: Join.  
25 THE WITNESS: We don't look at things

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1 standing alone. We look at the totality of the  
2 circumstances.  
3 BY MR. GOSMAN:  
4 Q. On the other hand, if you knew somebody was  
5 wanted for murder and was armed, that, standing alone,  
6 would justify the use of a SWAT team, wouldn't it?  
7 A. It certainly might.  
8 MS. WESTBY: Object to the form of the  
9 question.  
10 THE WITNESS: If you had a SWAT team.  
11 BY MR. GOSMAN:  
12 Q. All right. Well, if you were deploying a  
13 SWAT team, would the fact that somebody had guns in the  
14 house be sufficient evidence to call out a SWAT team?  
15 MR. THOMPSON: Objection as to form.  
16 MS. WESTBY: Join.  
17 THE WITNESS: No.  
18 BY MR. GOSMAN:  
19 Q. Okay. And would it be sufficient basis  
20 standing alone to conduct a SWAT-type operation, even  
21 if you didn't have a SWAT team, or particularly if you  
22 didn't have a SWAT team?  
23 MR. THOMPSON: Objection as to form.  
24 MS. WESTBY: Join.  
25 THE WITNESS: Standing alone?

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1 BY MR. GOSMAN:  
2 Q. Yes.  
3 A. The presence of weapons?  
4 Q. Yes.  
5 A. Would not determine whether or not we'd  
6 deploy a SWAT team. Does that answer your question?  
7 Q. Yes. Well, I think I understood what you  
8 meant by that. But are you saying, by your answer,  
9 that you would not deploy a SWAT team or perform a  
10 SWAT-type entry if the only information you had about  
11 the entry was that the person had loaded guns in his  
12 house?  
13 MS. WESTBY: Object to the form of the  
14 question.  
15 MR. THOMPSON: Join.  
16 MS. WESTBY: Misstates his testimony. He  
17 already answered your question, and he answered it  
18 precisely as you asked it.  
19 THE WITNESS: I can tell you that if I knew  
20 that there were drugs in the house, drug dealers or  
21 drug users with weapons, I know, based on my training  
22 and experience, that they are willing to use those to  
23 defend themselves and their stash.  
24 BY MR. GOSMAN:  
25 Q. So you see -- you do not see a difference

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1 between a drug dealer and guns and someone who is a pot  
2 user who owns a gun?  
3 MS. WESTBY: Object to the form of the  
4 question.  
5 MR. THOMPSON: Join.  
6 THE WITNESS: That's not what I said.  
7 BY MR. GOSMAN:  
8 Q. I think it is. You said in your experience  
9 people who use marijuana and have guns present --  
10 present a danger to police officers that would justify  
11 a dynamic entry. I mean, that's what you're saying;  
12 isn't it?  
13 MS. WESTBY: Object to the form of the  
14 question.  
15 THE WITNESS: Okay. I have fought and  
16 personally taken guns off of people who had marijuana  
17 on them who ran or fought us or whatever else, that  
18 were not dealers. But that didn't want to go to jail.  
19 I'm lucky they didn't use their guns on me.  
20 BY MR. GOSMAN:  
21 Q. All right. So do you see a difference  
22 between a person who is a drug dealer and who has a gun  
23 in his residence, and for purposes of deciding whether  
24 to deploy a SWAT team, and a person who is a marijuana  
25 user and has a gun in his home?

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1 MS. WESTBY: Object to the form of the  
2 question.  
3 MR. THOMPSON: Join.  
4 THE WITNESS: I don't understand where you're  
5 going with this. Again, it's not one issue or one  
6 piece of information that we look at when we decide  
7 what course of action to take.  
8 BY MR. GOSMAN:  
9 Q. You understand whether there's a difference  
10 between a person who is a drug dealer and has a gun in  
11 his home and a person who is a marijuana user and has a  
12 gun in his home, and for purposes of calling out a SWAT  
13 team?  
14 MR. THOMPSON: Object to the form.  
15 MS. WESTBY: Join.  
16 THE WITNESS: I understand the difference.  
17 If I had personal knowledge that one person only used  
18 drugs, only used marijuana, and another person was a  
19 drug seller. In this case, I didn't.  
20 BY MR. GOSMAN:  
21 Q. You didn't know that?  
22 A. I didn't know whether he was a dealer or not.  
23 Most of the people that I know or knew of or had  
24 contact with that smoke marijuana did not grow it.  
25 Q. It's your testimony that you didn't know the

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1 size of the operation. Could there have been 20 to 30  
2 plants down there as far as you know?  
3 A. Very well could have been.  
4 Q. And this was based on the information that  
5 you received from Officer Miner, correct?  
6 A. Correct.  
7 Q. You didn't receive any information from Josh  
8 Bessler?  
9 A. I don't know what you're talking about.  
10 Q. The confidential informant, correct?  
11 A. I never spoke with the confidential  
12 informant.  
13 Q. Did you ever speak with Officer Patterson?  
14 A. I don't think I spoke with him the day that  
15 we did the search warrant.  
16 Q. You knew he was being consulted for his  
17 expert advice?  
18 MR. THOMPSON: Objection as to form.  
19 MS. WESTBY: Join.  
20 THE WITNESS: At some point, somebody  
21 mentioned talking to Patterson.  
22 BY MR. GOSMAN:  
23 Q. And, in fact, he was invited to participate  
24 in the operation, was he not?  
25 A. I don't remember.

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1 Q. You don't remember that?  
2 A. No.  
3 Q. Did you know that Officer Patterson had  
4 spoken with the confidential informant?  
5 A. No.  
6 Q. And Officer Miner didn't share that with you?  
7 A. My recollection is that he consulted  
8 Patterson because Patterson had served on some type of  
9 drug team at a previous department and was familiar  
10 with grow operations. Beyond that, I don't know what  
11 their conversation consisted of.  
12 Q. All right. So Officer Miner didn't tell you  
13 what Patterson told him about the marijuana grow  
14 operation?  
15 MS. WESTBY: Object to the form of the  
16 question.  
17 THE WITNESS: I don't remember.  
18 BY MR. GOSMAN:  
19 Q. Well, let's assume that Officer Patterson had  
20 told you that it was a small grow operation and that it  
21 was limited to personal use. Would that have changed  
22 anything?  
23 MS. WESTBY: Object to the form of the  
24 question.  
25 THE WITNESS: I don't know.

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1 BY MR. GOSMAN:  
2 Q. You don't know?  
3 A. No.  
4 Q. Well, just a minute ago, you indicated that  
5 if you had -- that if you knew that someone was engaged  
6 in a small marijuana use offense and not engaged in  
7 dealing, and they had guns in their house, that  
8 wouldn't be a basis for calling out a SWAT team?  
9 MS. WESTBY: No. Objection. That's  
10 absolutely untrue.  
11 BY MR. GOSMAN:  
12 Q. Okay. Isn't that true, though?  
13 A. No.  
14 Q. If you knew the person was involved in  
15 personal use?  
16 A. No.  
17 Q. So you'd use a SWAT team to effect a warrant  
18 even if somebody was engaged in purely personal use and  
19 just had guns in their house?  
20 MR. THOMPSON: Objection as to form.  
21 Argumentative. Misstates his testimony.  
22 MS. WESTBY: Join.  
23 THE WITNESS: Possibly.  
24 BY MR. GOSMAN:  
25 Q. Possibly?

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1 Is that what happened here?  
2 MS. WESTBY: Object to the form of the  
3 question. Is -- I can't allow you to answer that  
4 question. Is what, what happened here?  
5 BY MR. GOSMAN:  
6 Q. Okay. If you knew that an individual was  
7 engaged in the personal use of marijuana and that you  
8 were going to effect a warrant to uncover the evidence  
9 for this charge, a misdemeanor charge --  
10 A. Uh-huh.  
11 Q. -- and you knew that this individual had guns  
12 in his house, would that be an appropriate basis for  
13 calling out or calling for a dynamic entry involving 11  
14 police officers or whatever it was?  
15 MS. WESTBY: Object to the form of the  
16 question.  
17 BY MR. GOSMAN:  
18 Q. If that's what you knew?  
19 MS. WESTBY: It's an incomplete hypothetical.  
20 It's improper.  
21 MR. THOMPSON: Join.  
22 THE WITNESS: A, I didn't know. B, it could.  
23 BY MR. GOSMAN:  
24 Q. B, it could?  
25 A. It could.

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1 Q. Form the basis for a dynamic entry?

2 A. Sure.

3 Q. Okay. Why?

4 MR. THOMPSON: Objection as to form.

5 THE WITNESS: It doesn't look like I recorded

6 what the narcotics found in all the search warrants

7 that I accompanied them with in College Park. But as

8 often as not, it was nothing. Regardless, the warrants

9 were still served.

10 BY MR. GOSMAN:

11 Q. I'm not talking about what was found.

12 A. So it doesn't matter what we found.

13 Q. I'm talking about the information you had

14 going in and the decision to employ a SWAT-type team?

15 A. We based our decision to deploy the team that

16 way we did based on the information that we had, not

17 some hypothetical situation that you're bringing up

18 now.

19 Q. I'm asking you to consider this hypothetical:

20 If you knew, before you made the decision, whether to

21 just go up and knock on the door or to deploy a 10- or

22 11- or 12-man SWAT team to effect a warrant, that what

23 you were going to be doing was to be serving a warrant

24 against a person who was involved in the personal use

25 of marijuana and who had guns in his house?

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1 MR. THOMPSON: Objection as to form.

2 MS. WESTBY: Incomplete hypothetical.

3 Improper. Join.

4 THE WITNESS: I would want to execute the

5 warrant the safest way possible.

6 BY MR. GOSMAN:

7 Q. Along that line, Officer, would you agree

8 that by deploying a tactical unit with 11 officers, who

9 had never done it before, could pose extra risks in the

10 service of a misdemeanor marijuana warrant?

11 MR. THOMPSON: Objection as to form.

12 Misstates the evidence. Mischaracterizes the execution

13 of the warrant.

14 MS. WESTBY: Join.

15 BY MR. GOSMAN:

16 Q. Okay.

17 A. I didn't know whether it was a misdemeanor or

18 a felony going into it.

19 Q. I know that. But I'm -- well, that's what

20 you say. And I'm not going to ask you that, Officer.

21 A. You keep implying that I knew --

22 Q. No.

23 A. -- exactly what was there, that it was a

24 misdemeanor. I didn't. I didn't know that.

25 Q. Did you have any information that it wasn't a

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1 misdemeanor?

2 A. I had information that it was a grow

3 operation.

4 Q. You didn't know how big it was?

5 A. I didn't know how big it was.

6 Q. And that wasn't important to you?

7 MS. WESTBY: Object to the form of the

8 question.

9 MR. THOMPSON: Join.

10 THE WITNESS: It could have been the entire

11 basement. It could have been one plant. I don't know.

12 BY MR. GOSMAN:

13 Q. And it wouldn't have made any difference

14 whether -- in your decision to deploy that SWAT-type

15 team?

16 MS. WESTBY: Object to the form of the

17 question.

18 MR. THOMPSON: Join.

19 BY MR. GOSMAN:

20 Q. It's a simple yes or no question, Officer,

21 and we can move on.

22 MS. WESTBY: And he needs to answer it the

23 way he needs to answer it.

24 THE WITNESS: Can you ask me the question

25 again.

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1 MR. GOSMAN: I'm going to ask the reporter to

2 read that one back.

3 (The record was read as

4 requested.)

5 THE WITNESS: The number of plants would have

6 no impact whatsoever.

7 BY MR. GOSMAN:

8 Q. So what were the factors that were important

9 to the use of a SWAT-type team that night, if the size

10 of the operation was irrelevant?

11 MS. WESTBY: Object to the form of the

12 question.

13 MR. THOMPSON: Join.

14 MS. WESTBY: Misstates the facts.

15 THE WITNESS: The fact that it was a grow

16 operation, the information that we had in regards to

17 the semiautomatic accessibility of weapons in the

18 house, throughout the house, and the information that

19 we had in regards to the disposition of Bret Wachsmuth.

20 BY MR. GOSMAN:

21 Q. And what information was that?

22 A. That he was paranoid; that he was a peeper,

23 meaning that he was constantly looking out windows to

24 see if anybody was outside of his house; that he was --

25 I don't remember the exact, like, diagnosis or

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1 whatever, but that there was some mental instability;  
2 all of those things were things that we considered.  
3 Q. Okay. Did you have any objective evidence  
4 that Mr. Wachsmuth presented a danger to the officers?  
5 MR. THOMPSON: Objection as to form.  
6 MS. WESTBY: Join.  
7 BY MR. GOSMAN:  
8 Q. I mean, I assume the fact that someone tells  
9 you he's paranoid is not objective evidence that the  
10 officers were faced with a threat?  
11 MR. THOMPSON: Objection as to form.  
12 MS. WESTBY: Same, join.  
13 THE WITNESS: What I had was the information  
14 that Miner provided us as to his disposition.  
15 BY MR. GOSMAN:  
16 Q. Okay.  
17 A. And Brett Lara confirming that there were  
18 some issues with Bret Wachsmuth in regards to his  
19 mental health.  
20 Q. Did you speak personally with Officer Lara?  
21 A. I did.  
22 Q. And what did he tell you?  
23 A. He told us all that there was something with  
24 Bret. He wasn't sure exactly what it was. But there  
25 was some form of mental -- either disorder or illness

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1 history with him.  
2 Q. All right. Did he tell you whether he was  
3 being medicated?  
4 A. No.  
5 Q. Did he tell you that this mental disorder  
6 tended to produce violence in Mr. Wachsmuth?  
7 A. No.  
8 Q. Did he tell you that this mental disorder  
9 caused him to be erratic and unpredictable?  
10 A. No.  
11 Q. Did he tell you that this mental disorder had  
12 ever led to an act of violence by Mr. Wachsmuth?  
13 A. He did not.  
14 Q. And other than the fact that Mr. Miner told  
15 you that he was paranoid, was there any objective  
16 evidence of how this paranoia had ever manifested  
17 itself?  
18 MR. THOMPSON: Objection as to form.  
19 MS. WESTBY: Join.  
20 THE WITNESS: Aside from what Miner told us  
21 about him constantly peeking out the windows.  
22 BY MR. GOSMAN:  
23 Q. What does that have to do with somebody being  
24 a threat to officer safety?  
25 MR. THOMPSON: Objection as to form.

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1 THE WITNESS: My experience with drug abusers  
2 is that they are constantly worried about losing  
3 whatever it is they have. Their drugs, their money,  
4 whatever.  
5 BY MR. GOSMAN:  
6 Q. Does that make them a threat -- an objective  
7 threat to officer safety, drug users?  
8 MR. THOMPSON: Objection as to form.  
9 THE WITNESS: I lost my train of thought. I  
10 was trying to answer when you interrupted me.  
11 Can you read back my answer?  
12 (The record was read as  
13 requested.)  
14 THE WITNESS: Okay. I'd encountered on  
15 search warrants barricaded doors in the past, fairly  
16 often there were weapons there. They tried to dispose  
17 of whatever it is they had. If they had the  
18 opportunity, the demeanor of drug users, including  
19 people that I knew, just in my personal life in  
20 Georgia, that I knew smoked marijuana, was that they  
21 were always paranoid. I don't know because I don't  
22 smoke drugs.  
23 BY MR. GOSMAN:  
24 Q. Well, I guess what we're looking for here,  
25 Officer, is evidence that there was an objective threat

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1 to the safety of the officers that night. And you've  
2 told me that you heard from the confidential informant  
3 that Bret Wachsmuth was paranoid.  
4 And I want to know if that is your objective  
5 evidence that he posed a threat to the safety of  
6 officers that night?  
7 MR. THOMPSON: Objection as to form. Asked  
8 and answered.  
9 Go ahead, if you can.  
10 THE WITNESS: I went with the information  
11 that I had available to me.  
12 BY MR. GOSMAN:  
13 Q. And that was it, that he was paranoid?  
14 MR. THOMPSON: Objection as to form.  
15 He's told you a number of times that there  
16 was guns in the house, and you're just trying to  
17 mischaracterize his testimony.  
18 MR. GOSMAN: No, I'm looking for objective  
19 evidence relative to paranoia that he was a threat to  
20 the officers.  
21 MR. THOMPSON: Well, he's told you it's not  
22 limited to one thing. It is the totality of the  
23 circumstances. A grow operation. Guns. Paranoid.  
24 MR. GOSMAN: I'm asking the questions.  
25 MR. THOMPSON: You're starting to badger the

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1 witness.  
2 MR. GOSMAN: No, I'm not.  
3 MR. THOMPSON: We'll stop the deposition and  
4 call the Magistrate. I'm not going to tolerate this.  
5 THE WITNESS: I can list all the things  
6 again.  
7 BY MR. GOSMAN:  
8 Q. Have you listed all the things that went into  
9 the decision to deploy the SWAT-type team that night?  
10 MR. THOMPSON: Objection as to form.  
11 THE WITNESS: Guns, grow operation, his  
12 mental status. The fact that they may be abusing  
13 narcotics, that was something else that was brought up  
14 about the stuffed animals and shipping prescription  
15 medications in their stuffed animals. I don't know how  
16 that affects someone.  
17 And one of the other things that I took into  
18 consideration was the possibility that there was a  
19 child in the house.  
20 Again, I did what I thought was the safest  
21 for everyone involved, not just the officers.  
22 BY MR. GOSMAN:  
23 Q. We're going to talk more about the entry and  
24 the information contained in your report relating to  
25 the entry. But before I leave this question of

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1 paranoia, we talked about mental instability, and I  
2 think you gave me all the information you had regarding  
3 mental instability.  
4 But regarding paranoia, was other than the  
5 fact that he peeked out the windows when somebody came  
6 by, was there any objective evidence of paranoia that  
7 led you to believe that there was a threat to officer  
8 safety that night?  
9 A. I don't recall.  
10 MR. GOSMAN: All right. We can go ahead and  
11 take a lunch break. And thank you very much.  
12 (Recess taken 12:51 to 2:25  
13 p.m., October 5, 2010)  
14 MR. GOSMAN: We're back on the record.  
15 BY MR. GOSMAN:  
16 Q. Mr. Chretien, lets talk about the  
17 confidential informant for a few minutes.  
18 How important is the reliability of the  
19 informant in gathering information for a SWAT-type  
20 operation?  
21 MS. WESTBY: Object to the form of the  
22 question.  
23 THE WITNESS: I think the informant has to  
24 show that he's reliable.  
25

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1 BY MR. GOSMAN:  
2 Q. What did you know about the reliability of  
3 the informant used to gain information in this case?  
4 A. Nothing.  
5 Q. Did you know the informant's name?  
6 A. Not at the time.  
7 Q. He was referred to you as the confidential  
8 informant, then?  
9 A. Uh-huh.  
10 Q. And that would be by Officer Miner?  
11 A. (Witness nods head.)  
12 Q. And were you aware that the confidential  
13 informant had a substantial criminal history?  
14 MR. THOMPSON: Objection as to form.  
15 THE WITNESS: Again, I didn't know who he  
16 was, so I didn't know his history.  
17 BY MR. GOSMAN:  
18 Q. You didn't know anything about his criminal  
19 history?  
20 A. The only thing I knew is that he had lived  
21 with them.  
22 Q. Did you know whether other agencies would use  
23 this confidential informant as a source of information?  
24 A. No, I didn't know.  
25 Q. I think I've asked this question, but I need

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1 to be clear on this subject. You did not personally  
2 speak to the confidential informant at any time?  
3 A. Correct.  
4 Q. So would it be fair to say, sir, that you've  
5 never met the confidential informant?  
6 A. To my knowledge, I have not met the  
7 confidential informant.  
8 Q. And other than the confidential informant,  
9 what other sources did you have for the intelligence  
10 that you acquired in preparation for entry into the  
11 Wachsmuth home?  
12 MR. THOMPSON: Objection as to form.  
13 MS. WESTBY: Join.  
14 THE WITNESS: The information I was getting  
15 from other officers.  
16 BY MR. GOSMAN:  
17 Q. All right. And we've talked about Officer  
18 Lara. Was there any other information that you  
19 acquired from other officers about Bret or Tricia  
20 Wachsmuth or their home?  
21 A. Aside from what Miner and Lara told me, no.  
22 Q. Okay. We do know that Officer Blackmore was  
23 assigned to drive by the premises?  
24 A. Right. He was -- he was telling us what was  
25 going on. But I never spoke to him directly.

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1 Q. All right. Is intelligence gathering of the  
2 kind that Officer Blackmore performed that night  
3 typical in the preplanning phase of a dynamic entry?  
4 MR. THOMPSON: Objection as to form.  
5 MS. WESTBY: Join  
6 THE WITNESS: In my specific experience, that  
7 was some of the best surveillance that I'd had prior to  
8 execution of a search warrant.  
9 BY MR. GOSMAN:  
10 Q. All right. Well, you know -- and I  
11 appreciate that, and we'll talk about that in a minute.  
12 But the question wasn't whether it was the best  
13 information you'd ever gotten.  
14 The question is: Is this typical of the  
15 preplanning phase of a SWAT-type entry. I think I said  
16 dynamic entry, but SWAT-type entry to have an officer  
17 go by the residence and view the residence and make  
18 sure you're at the right place and that sort of thing?  
19 MR. THOMPSON: Objection as to form.  
20 MS. WESTBY: Join.  
21 THE WITNESS: It was not typical in my  
22 experience.  
23 BY MR. GOSMAN:  
24 Q. All right. I want to take just a minute.  
25 You can relax for just a minute because I'm going to go

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1 looking for something.  
2 (Discussion held off the  
3 record.)  
4 BY MR. GOSMAN:  
5 Q. Okay. Exhibit 3 is a document that  
6 represents course materials for a mechanical breaching  
7 seminar that you attended; am I correct?  
8 A. Yes.  
9 Q. And I want you to turn to Page 5 of those  
10 materials. And there's a box there at the bottom of  
11 the page entitled, "Breach Point Intelligence."  
12 A. Uh-huh.  
13 Q. And there is a -- there's handwriting in that  
14 box; is there not?  
15 A. Yes.  
16 Q. And I assume that's your handwriting?  
17 A. Yes.  
18 Q. Okay. And the first bulleted entry there  
19 does say, "Debriefs of UC or CI involvement, have them  
20 diagram and describe structure," correct?  
21 A. Yes.  
22 Q. Did you have -- well, that's a --  
23 You didn't actually speak to the CI, so if  
24 there was any diagramming of the residence by the CI,  
25 it would have occurred under Miner's watch; is that

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1 correct?  
2 MR. THOMPSON: Objection as to form.  
3 MS. WESTBY: Join.  
4 BY MR. GOSMAN:  
5 Q. As far as you know?  
6 MR. THOMPSON: Objection as to form.  
7 MS. WESTBY: Join.  
8 THE WITNESS: I know that Miner drew the  
9 layout of the house on the dry erase board.  
10 BY MR. GOSMAN:  
11 Q. What else was on that dry erase board? Let's  
12 take a minute and finish that one off.  
13 A. I don't remember everything that was on the  
14 board.  
15 Q. Do you remember anything specifically that  
16 was on the board?  
17 A. I think I had probably listed who was  
18 assigned what duties.  
19 Q. Anything else?  
20 A. The diagram of the residence. I may have  
21 listed some intelligence, whatever intelligence that we  
22 had on a bulleted list or something.  
23 Q. All right. And I'm sort of cutting you off  
24 here. And I don't mean to do that.  
25 Was there anything else?

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1 A. No, not that I can think of.  
2 Q. Okay. The second bulleted item there under  
3 Breach Point Intelligence is: "Visit location, not  
4 drive by." Do you see that?  
5 A. I do.  
6 Q. And that is a standard protocol, is it not?  
7 A. This represents the NTOA's best practices.  
8 This is what they suggest.  
9 Q. All right. I'll accept that. Is it what you  
10 suggest?  
11 A. During ideal situations, sure. This instance  
12 where there is a peeper constantly looking out the  
13 window, cars driving by, an unknown car sitting outside  
14 his residence would raise suspicions.  
15 Q. Do you have any unmarked patrol cars at the  
16 Powell Police Department?  
17 A. Two that are not marked. But they are the  
18 same model vehicle that the patrol officers drive.  
19 Q. All right. So in other words, you didn't  
20 visit the location or you didn't have an officer drive  
21 by the location, confirm the identification of the  
22 location, because you were afraid that Mr. Wachsmuth,  
23 who had been described as a peeper would see you drive  
24 by?  
25 MS. WESTBY: Object to the form of the

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1 question.  
2 MR. THOMPSON: Join.  
3 THE WITNESS: First of all, I didn't say we  
4 had anybody do that. Second of all, I'm not aware of  
5 exactly where Officer Blackmore was. But he did  
6 confirm that that was the residence, and he had eyes on  
7 it. He was the one who told us he saw somebody go in  
8 and come out of the house.  
9 BY MR. GOSMAN:  
10 Q. Okay. And I knew that.  
11 So Officer Blackmore did perform this  
12 intelligence function prior to the entry into the  
13 residence?  
14 A. He was watching the house, described it to  
15 us.  
16 Q. Did he get the right house?  
17 A. Yes.  
18 Q. How do you know that?  
19 A. Found pot in the basement.  
20 Q. No. I'm saying, did Officer Blackmore  
21 observe the right house?  
22 A. Yes.  
23 Q. How do you know that?  
24 A. He described it to us.  
25 Q. How was it that he came to the information

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1 that a young child had driven -- or had been taken into  
2 the house and had not come out?  
3 MS. WESTBY: Object to the form of the  
4 question.  
5 THE WITNESS: He was watching the house. I  
6 don't know exactly.  
7 BY MR. GOSMAN:  
8 Q. He could have been watching the wrong house  
9 though, correct?  
10 MR. THOMPSON: Objection to form.  
11 MS. WESTBY: Join.  
12 THE WITNESS: I don't know.  
13 BY MR. GOSMAN:  
14 Q. Well, we know a young child didn't go into  
15 the house and fail to come out before the entry team  
16 arrived because there was no young child in the  
17 residence, correct?  
18 MR. THOMPSON: Objection as to form.  
19 MS. WESTBY: Join.  
20 THE WITNESS: You're correct that there was  
21 no young child in the house  
22 BY MR. GOSMAN:  
23 Q. And your intelligence was that there was a  
24 young child in the house, based on Officer Blackmore's  
25 observation, correct?

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1 MR. THOMPSON: Objection as to form.  
2 THE WITNESS: No.  
3 MS. WESTBY: Join.  
4 BY MR. GOSMAN:  
5 Q. Okay. Well, what was it based on then?  
6 A. Based on what Officer Blackmore reported to  
7 us, and he did not report for certain that a young  
8 child went in the house. He described to us the build,  
9 said it appeared to be a young child. He couldn't be  
10 sure. He couldn't even tell if it was male or female.  
11 Q. Did he describe the vehicle that this -- that  
12 was involved in this situation?  
13 A. He did.  
14 Q. Was it either one of the Wachsmuth's  
15 vehicles?  
16 A. I don't know if it was either one of their  
17 vehicles. I remember it was an SUV.  
18 Q. You say that officer Blackmore provided some  
19 of the best intelligence you've ever had in one of  
20 these operations?  
21 A. That's what I said.  
22 Q. Yeah. What was it that made that  
23 intelligence so good?  
24 A. That it was current, that he was there  
25 watching.

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1 Q. Well, anybody who is there just before an  
2 arrest or a raid is there currently, wouldn't that be  
3 true? I'm trying to figure out why it would make that  
4 information so valuable or so superior?  
5 A. Because I'd never had it before.  
6 Q. All right. It's true, is it not, that  
7 Officer Blackmore was wrong in his estimate that this  
8 was a young child, young male child, that was still in  
9 the residence when you performed the SWAT operation,  
10 SWAT-type operation?  
11 A. Like I said before, there was no child in the  
12 house.  
13 Q. And that -- well -- and that information came  
14 from Officer Blackmore, correct?  
15 A. Correct.  
16 Q. Based on your training and experience,  
17 Officer, what are some of the things that you need from  
18 an informant if he's going to be a reliable source of  
19 information for you?  
20 MS. WESTBY: Object to the form of the  
21 question.  
22 THE WITNESS: I haven't had the opportunity  
23 to work with informants. Aside from knowing that they  
24 need to be reliable, I don't know.  
25

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1 BY MR. GOSMAN:  
2 Q. Okay. Lets go ahead and turn to Exhibit 10  
3 again. There's a list of seven items on the right-hand  
4 side of that list.  
5 A. Uh-huh.  
6 Q. I want you to go ahead and read them into the  
7 record?  
8 A. "One, knock door; two, police search warrant;  
9 three, break window; four, flashbang" -- I think it's  
10 bedroom after that" -- "five, wait for noise; six,  
11 break window" -- and again, it looks like back to  
12 me" -- "and seven, door."  
13 Q. Okay. Is that the sequence of events that  
14 you discussed that night before you sent the team out  
15 to the Wachsmuth residence?  
16 A. Those are some of the things we discussed  
17 that night.  
18 Q. Okay. Are they in the proper order?  
19 MR. THOMPSON: Objection as to form.  
20 THE WITNESS: There wasn't -- there wasn't an  
21 order per se.  
22 BY MR. GOSMAN:  
23 Q. Is that order inaccurate?  
24 MR. THOMPSON: Objection as to form.  
25 THE WITNESS: I just told you there was no

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1 order per se.  
2 BY MR. GOSMAN:  
3 Q. Does that mean that none of the officers were  
4 instructed as to the order in which these events were  
5 to be sequenced?  
6 MR. THOMPSON: Objection as to form.  
7 MS. WESTBY: Join.  
8 THE WITNESS: Again, there was no order per  
9 se.  
10 BY MR. GOSMAN:  
11 Q. Well, okay. I'm going to be fine with that.  
12 I can live with that. But what were the officers told  
13 in terms of the sequence of events when they left your  
14 building that night?  
15 MR. THOMPSON: Objection as to form.  
16 MS. WESTBY: Join.  
17 BY MR. GOSMAN:  
18 Q. Are you telling me there was no order  
19 described to them?  
20 A. That's not what I'm telling you.  
21 Q. Well, that's what you just said, so go ahead  
22 and clear it up for me, please.  
23 MR. THOMPSON: Objection as to form.  
24 Argumentative. Badgering the witness.  
25 MS. WESTBY: Join.

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1 THE WITNESS: What I had told the officers  
2 were that we would prepare for the worst-case scenario.  
3 We would attempt to knock and announce. Best-case  
4 scenario, the occupants open the door. We conduct a  
5 search. Worst-case scenario, they don't open the door,  
6 we have to force it in.  
7 If that is the case, I wanted three things to  
8 happen as near simultaneous as I could. And that was  
9 the front door being rammed, the bedroom window being  
10 broken, the back window being broken to cause a  
11 diversion. The introduction of the flashbang into the  
12 bedroom where we knew that there were -- or we had  
13 information that there were more than one weapon was  
14 kept in the bedroom.  
15 BY MR. GOSMAN:  
16 Q. So that's why the diversionary device went  
17 into the bedroom window?  
18 A. I wanted to deny the area that I was told  
19 contained the most weapons to someone who could  
20 potentially use them against us. I knew that --  
21 according to the CI's information, that that was Bret  
22 and Tricia's bedroom. To our knowledge, they did not  
23 have a child.  
24 The reason that that would be the least  
25 likely place for a child to be, and that --

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1 Q. The bedroom is the least likely?  
2 A. You going to let me finish?  
3 Q. No.  
4 MS. WESTBY: No. You asked the question,  
5 he's answering. You need to let him finish his answer.  
6 BY MR. GOSMAN:  
7 Q. All right. Go ahead and finish.  
8 A. That were they to discover us and go for  
9 weapons, that would be the room they would go to. I  
10 wanted to keep people out of that room.  
11 Q. Now, you said something in the course of that  
12 answer that I wanted to visit about. You said that the  
13 bedroom was the least likely place for the child to be.  
14 Why would you say that?  
15 MR. THOMPSON: Objection as to form. It  
16 misstates his testimony.  
17 MS. WESTBY: He said the parent's bedroom,  
18 the adults in the house. Don't deliberately misstate  
19 testimony, please.  
20 BY MR. GOSMAN:  
21 Q. Well, why would that be, tell me?  
22 A. Because they didn't have a ten-year-old  
23 child. If there was a child in the house, it wouldn't  
24 have been theirs, therefore, I reasoned that that child  
25 wouldn't be in their bedroom. I knew that there was a

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1 spare bedroom and a living room.  
2 Q. Did you know which was which?  
3 A. Which bedroom was theirs?  
4 Q. Yeah.  
5 A. Yes.  
6 Q. How did you know that?  
7 MR. THOMPSON: Asked and answered.  
8 BY MR. GOSMAN:  
9 Q. Well, I want to hear it again.  
10 A. 'Cause Miner drew the diagram of the house  
11 based on the information he received from the CI. He  
12 told us where he had been living when he was there and  
13 where Bret and Tricia slept.  
14 Q. All right. So you assumed the child would  
15 not be in the bedroom?  
16 A. No, I reasoned.  
17 Q. All right. You reasoned that the child  
18 wouldn't be in the bedroom. Did you know where the  
19 child was?  
20 MR. THOMPSON: Objection to form.  
21 MS. WESTBY: Join.  
22 THE WITNESS: There was no child.  
23 BY MR. GOSMAN:  
24 Q. I understand that. But you understood, based  
25 on Officer Blackmore's apparently faulty intelligence,

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1 that there was a ten-year-old child in the residence?  
2 MR. THOMPSON: Objection as to form.  
3 MS. WESTBY: Join.  
4 THE WITNESS: I don't know how far away  
5 Officer Blackmore was when he made that determination.  
6 I'm assuming he wouldn't be right across the street,  
7 right out front. It was dark. He could have been a  
8 block away. There's a number of things that go into  
9 Officer Blackmore's inaccurate description of Tricia.  
10 BY MR. GOSMAN:  
11 Q. Of Tricia now? Is that what we've decided,  
12 is that this was Tricia that got out of this vehicle?  
13 A. Again, I'm reasoning. There was one person  
14 that did not go back to the vehicle. When we got back  
15 to the house, there was one person in the house.  
16 You're drawing conclusions. This is just what I did.  
17 Q. Okay. I understand that. Fair enough.  
18 Now, Officer Blackmore, who a minute ago you  
19 said provided some of the most outstanding intelligence  
20 you've seen in one of these cases, was too far away to  
21 see what he reported?  
22 MR. THOMPSON: Objection as to form.  
23 MS. WESTBY: And, you know, I just have to  
24 tell you, I cannot imagine that you're going to want  
25 the Court to review some of these questions. And if

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1 we're forced to stop and go to the Court, I just would  
2 like you to think about how you're handling this. And  
3 really think whether or not you would like the Court to  
4 be reviewing these questions.  
5 BY MR. GOSMAN:  
6 Q. Officer, the point is that you felt that  
7 there was a ten-year-old child in the residence before  
8 the team went in. Now, am I telling you something that  
9 is new to you, or is this the truth?  
10 MS. WESTBY: Object to the form of the  
11 question.  
12 MR. THOMPSON: Join.  
13 THE WITNESS: We weren't sure.  
14 BY MR. GOSMAN:  
15 Q. Well, one of the reasons why you deployed the  
16 SWAT-type team that night was because there was a young  
17 child in the house and you wanted to protect it, right?  
18 A. If.  
19 Q. Yes, if.  
20 A. If, like we if'd all morning. If there was a  
21 young child in the house, obviously I want to take  
22 whatever precautions I can to minimize the trauma on a  
23 young child. Our intent wouldn't be to traumatize a  
24 kid. We were going to use the tactics that we thought  
25 were the safest.

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1 Q. All right. Well, the intelligence you had  
2 that evening was that there was a young child in the  
3 residence, correct or incorrect?  
4 A. Possibly.  
5 Q. All right. If there was a young child in the  
6 residence, did you know where the child was?  
7 A. There was no child, but no, we didn't know.  
8 We knew that the lights were on in the living room, not  
9 in the bedroom.  
10 Q. You didn't know whether the child was lying  
11 down?  
12 A. Nope.  
13 Q. Okay. We're going to go back to this little  
14 list that is on Exhibit 10. And it's the -- on the  
15 right-hand side of the document, seven items. And I  
16 want you to tell me what's wrong with the order of that  
17 list as it's described there, if anything?  
18 MR. THOMPSON: Objection as to form.  
19 MS. WESTBY: We've gone over this. We have  
20 gone over this and over it.  
21 MR. GOSMAN: No, we haven't.  
22 MS. WESTBY: Yes, we have.  
23 THE WITNESS: Again, it's a list.  
24 BY MR. GOSMAN:  
25 Q. It is a list. Do you have any reason to

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1 doubt that this list was prepared based on information  
2 that was being communicated to the officers that night  
3 prior to the entry into the Wachsmuth residence?  
4 MS. WESTBY: Object to the form of the  
5 question. Calls for speculation. You know who  
6 prepared this document. You know that it is not the  
7 witness sitting here today. We have been over this.  
8 I ...  
9 THE WITNESS: I told you what my plan was as  
10 I understood it. What somebody else wrote down, I  
11 can't testify to.  
12 BY MR. GOSMAN:  
13 Q. So what's wrong with what's written down  
14 there, is it inconsistent with the plan you had in your  
15 mind?  
16 MS. WESTBY: Object to the form of the  
17 question. Misstates the testimony.  
18 MR. THOMPSON: Join.  
19 MS. WESTBY: Calls for speculation.  
20 THE WITNESS: Once again, I told you that  
21 there was no order per se, that I envisioned several  
22 things happening simultaneously.  
23 BY MR. GOSMAN:  
24 Q. Okay. So can we leave it at that, that you  
25 envisioned these events to be occurring essentially

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1 simultaneously?  
2 THE WITNESS: No, not these events.  
3 MS. WESTBY: Object to the question.  
4 THE WITNESS: What I told you earlier.  
5 BY MR. GOSMAN:  
6 Q. What did you tell me earlier?  
7 A. Go back and have her read it.  
8 Q. No.  
9 A. When you can't remember a question, you have  
10 her go back and read it.  
11 MR. THOMPSON: Stop. We're going to go to  
12 the Court for a protective order if this continues.  
13 I've told you once today. He's told you the sequence  
14 of the events. He told you exactly what happened.  
15 Now you're trying to ask the witness the same  
16 question and get him to give you a different answer so  
17 it's inconsistent testimony. That's not going to be  
18 allowed, Jeff. That is not going to be allowed.  
19 MR. GOSMAN: The witness just testified that  
20 these events were to occur simultaneously.  
21 MR. THOMPSON: He told you earlier what his  
22 interpretation of that document was. He told you how  
23 the plan was supposed to happen. You're not going to  
24 ask him the same question time after time to get  
25 inconsistent testimony. It's not allowed under the

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1 rules.  
2 MR. GOSMAN: I'm simply--  
3 MR. THOMPSON: And we'll not allow it in this  
4 deposition.  
5 MR. GOSMAN: I'm simply asking him how the  
6 events occurred simultaneously.  
7 MR. THOMPSON: You've asked him that.  
8 MS. WESTBY: He told you that.  
9 MR. THOMPSON: He's told you that. You're  
10 not going to get two answers to the same question time  
11 and time again. It's gone on now since 9:00 this  
12 morning.  
13 (Exhibit 16 identified)  
14 BY MR. GOSMAN:  
15 Q. All right. Let's take a look at Exhibit 16.  
16 And I think at some point on Exhibit -- let's see --  
17 16, and I'll direct your attention to this. Okay.  
18 It's down towards the bottom of the page it says, "The  
19 plan was to knock-and-announce on the front door." Do  
20 you see that?  
21 A. Yes.  
22 Q. Let's just have you read up to the backyard  
23 team, that first couple of sentences into the record?  
24 MS. WESTBY: And, you know, you had Officer  
25 Danzer do this yesterday.

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1 MR. GOSMAN: Well, he didn't prepare the  
2 report.  
3 MS. WESTBY: Precisely. That is absolutely  
4 true. But you --  
5 MR. GOSMAN: He participated in the event.  
6 MS. WESTBY: But you had him read it into the  
7 record yesterday. Is it absolutely necessary to have  
8 this witness read this entire document into the record,  
9 or can you simply ask him questions about it?  
10 Yes, it is his -- well, I believe it's his --  
11 THE WITNESS: Yeah, that is mine.  
12 BY MR. GOSMAN:  
13 Q. All right. We've established this is your  
14 report, correct?  
15 A. Yes.  
16 Q. All right. I want you to read those first  
17 two sentences under, the plan was to knock?  
18 MS. WESTBY: Out loud?  
19 BY MR. GOSMAN:  
20 Q. Out loud, please.  
21 A. "The plan was to knock on the front door and  
22 announce, 'police, search warrant.' If the door did  
23 not open immediately, we would use the ram to force  
24 entry. The primary entry team's responsibility was to  
25 secure the residence and ensure the safety of everyone

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1 involved."  
2 Q. Okay. Is that -- is that what happened? Is  
3 that what you planned?  
4 A. That was an element of the plan.  
5 Q. All right. And are there any other documents  
6 in this case that describe the plan any differently  
7 than what you see right there?  
8 MR. THOMPSON: Objection as to form.  
9 BY MR. GOSMAN:  
10 Q. Any other reports, any other descriptions? I  
11 mean, we've got Exhibit 10. And we've got Exhibit 16.  
12 Is there anything else that describes the plan with  
13 regard to the entry into the residence?  
14 MR. THOMPSON: Objection as to form.  
15 MS. WESTBY: And just for clarification, are  
16 you talking about what he just read, or are you talking  
17 about this entire document?  
18 MR. GOSMAN: I'm talking about what he just  
19 read. I said the entry plan.  
20 THE WITNESS: Sure, there's plenty on this  
21 same page that describes parts to the plan.  
22 BY MR. GOSMAN:  
23 Q. I'm talking about the actual entry, from  
24 staging on the front door to knocking it in and going  
25 inside, that's the sequence of events?

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1 MR. THOMPSON: Objection as to form.  
2 MS. WESTBY: Objection.  
3 THE WITNESS: That was not the only part of  
4 the plan.  
5 BY MR. GOSMAN:  
6 Q. I know that.  
7 The question was: Are these the only two  
8 documents, Exhibit 10 and Exhibit 16, that reference  
9 this particular part of the plan?  
10 MR. THOMPSON: Counsel, how can he answer  
11 that question? Really, is that --  
12 MR. GOSMAN: He was the team leader.  
13 MR. THOMPSON: Is that -- when you gave us  
14 400 pages of documents, is that really fair?  
15 MR. GOSMAN: I mean, you gave me these  
16 documents. They are all part of the police reports.  
17 MR. THOMPSON: What we can do, Counsel, is we  
18 can have him sit here and review every one of these.  
19 If you want to take up that time in your deposition,  
20 and then he can answer the question.  
21 But you're asking him, has he reviewed 400  
22 pages of documents, and is there any other document out  
23 there which evidences this plan. That's just unfair.  
24 MR. GOSMAN: Okay. I'll tend to agree with  
25 that.

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1 MR. THOMPSON: I mean, we need to move this  
2 on.  
3 BY MR. GOSMAN:  
4 Q. Okay. Let me ask this question: Are there  
5 any other documents that you're aware of that provide a  
6 description for the entry into the residence, other  
7 than what we see here as Exhibit 16 and what was  
8 contained on Exhibit 10?  
9 MS. WESTBY: Object to the form of the  
10 question.  
11 THE WITNESS: Not that I know of. This is my  
12 report.  
13 BY MR. GOSMAN:  
14 Q. All right. So when you arrived that night at  
15 the house, I understand that a dog barked; is that  
16 correct?  
17 A. Uh-huh.  
18 Q. Where was everyone when the dog barked? Do  
19 you know?  
20 A. I know that we weren't where we wanted to be.  
21 Q. Okay. And how far was the entry team from  
22 the door when the dog barked?  
23 A. I don't know. In the front yard.  
24 Q. Okay. And where was Officer McCaslin and  
25 Officer Kent, if you know?

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1 A. I don't. I would think that they would be on  
2 the side yard.  
3 Q. You don't know?  
4 A. I don't know for certain, no.  
5 Q. And when the dog barked, what did you do as  
6 the team leader?  
7 A. I don't think I took any specific action.  
8 Q. Did you quicken your gait toward the front  
9 porch?  
10 A. I don't remember.  
11 Q. Well, you just told me that it caused the  
12 plan to be hurried. In what way did it cause the plan  
13 to be hurried?  
14 A. I didn't say it caused the plan to be  
15 hurried. Those are your words.  
16 Q. Did it cause the plan to be hurried?  
17 A. It added an element of -- I can't think of  
18 the word. Maybe just added stress.  
19 Q. And how did the entry team arrange themselves  
20 on the front porch?  
21 A. We didn't. As I recall, the front porch was  
22 pretty small. And I don't remember if it was concrete  
23 or wood. But from what I recall, it was only an area  
24 of about 4 feet by 4 feet. So the entry team would  
25 have been in the front yard.

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1 Q. Behind which officers?

2 A. Chapman was knocking on the door, Miner would

3 have been to the side with the ram. Beyond that, I'm

4 not sure of the exact order.

5 Q. And did you hear the expression, "police,

6 search warrant" before the door was breached?

7 A. Yes.

8 Q. Okay. How much time elapsed?

9 A. A reasonable amount of time.

10 Q. It was? It wasn't immediately thereafter

11 that the door was breached?

12 A. Considering the circumstances, I'd say that a

13 reasonable amount of time elapsed between the time that

14 Chapman knocked on the door, announced police, search

15 warrant, and Miner hit the door with the ram.

16 Q. All right. So what's a reasonable amount of

17 time in your mind?

18 A. Depends on the circumstances.

19 Q. We're only talking about one set of

20 circumstances here, Officer. And that's the

21 circumstances that occurred that night.

22 MS. WESTBY: Ob --

23 THE WITNESS: And as I said, I don't know.

24 BY MR. GOSMAN:

25 Q. You don't know?

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1 A. I don't know a specific number of seconds or

2 minutes. I know that the time, I thought, was

3 reasonable.

4 Q. Okay. How many seconds elapsed from the time

5 the door was breached until the diversion device was

6 detonated?

7 A. I don't know. Other than to say that I was

8 inside the house when it happened.

9 Q. And had Tricia Wachsmuth gotten up from the

10 couch by the time you were in the house?

11 MR. THOMPSON: Objection as to form. Asked

12 and answered.

13 THE WITNESS: I don't know what she did. I

14 wasn't the first one in the house. When I came into

15 the house, somebody was addressing her. I don't

16 remember if she was standing or sitting.

17 BY MR. GOSMAN:

18 Q. You'll agree with me, will you not, that the

19 materials contained in Exhibit 16 were prepared at or

20 near the time that the entry occurred or shortly

21 thereafter, I should say -- strike that.

22 The information contained in your report was

23 prepared shortly after the event occurred, correct?

24 A. Yes.

25 Q. And is the information contained in your

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1 report accurate?

2 A. It was to the best of my knowledge at the

3 time.

4 Q. Well, is it now, as you sit here today?

5 A. The only thing that I see is not accurate is

6 the second to the last paragraph on the first page, the

7 last sentence.

8 Q. Yes.

9 A. "Officer McCaslin then checked the area

10 immediately inside the window for people or obstacles

11 and deployed the N.F.D.D." He did that to the best of

12 his ability. But because of the window height, he

13 couldn't see everything. I didn't sit down with

14 McCaslin when I wrote the police report.

15 Q. Okay.

16 A. I wrote it on my own. I wrote it based on

17 what we had talked about.

18 Q. And you found out since then that Officer

19 McCaslin couldn't see clearly through the window -- in

20 the window?

21 MS. WESTBY: Object to the form of the

22 connection. Misstates the testimony.

23 MR. GOSMAN: Well, whatever it is.

24 MR. THOMPSON: Join.

25 MS. WESTBY: No, it's not whatever it was.

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1 MR. GOSMAN: Yes, it is.

2 MS. WESTBY: No, it isn't.

3 BY MR. GOSMAN:

4 Q. Did you talk to Officer McCaslin and find out

5 that that statement that you got in your report was not

6 accurate?

7 A. Was not 100 percent accurate due to the

8 height of the window.

9 Q. All right. And that's it? Is that the only

10 thing in the months that you've had since this lawsuit

11 was filed and since this night occurred, that you would

12 take issue with in terms of what's contained in this

13 report?

14 MR. THOMPSON: Take your time and read it.

15 MR. GOSMAN: Yes, you can do that. We can

16 take a break for five, six, seven minutes if you'd

17 like.

18 (Recess taken 3:04 to 3:10

19 p.m., October 5, 2010)

20 BY MR. GOSMAN:

21 Q. Officer, have you taken time to examine your

22 report, which we've identified as Exhibit 16?

23 A. Yes.

24 Q. And we talked a moment ago about an issue

25 with Officer McCaslin's deployment of the N.F.D.D., and

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1 how you had received new information since the report  
2 was prepared. Is there anything else in this report  
3 that you would take issue with?  
4 A. Probably the wording in the third paragraph  
5 from the bottom.  
6 Q. Okay. Go ahead.  
7 A. The second sentence.  
8 Q. Yes.  
9 A. "If the door did not open immediately."  
10 Q. Okay. And why would you take issue with  
11 that?  
12 A. It was like I just said, we would want to  
13 give a reasonable amount of time for a --  
14 Q. Well, that's what you just said here today,  
15 correct?  
16 A. Yes.  
17 Q. Okay. So you'll agree, then, that that's not  
18 what you wrote in your report back in March of 2009,  
19 correct?  
20 A. Correct.  
21 Q. All right. Okay. Back to Exhibit 10 for  
22 another moment. Is there anything in Exhibit 10 that  
23 indicates that you waited -- or that you were to wait  
24 for the occupant to open the door before proceeding  
25 with the sequence of events that are listed in

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1 Paragraphs 1 through 7 on that document?  
2 MS. WESTBY: Object to the form of the  
3 question. Again, I mean, I think at some point, we  
4 have to --  
5 MR. GOSMAN: Move on?  
6 MS. WESTBY: We have to move on. And we have  
7 to not allow this witness to testify as to the meaning  
8 of a document that he did not create, that you know.  
9 MR. GOSMAN: All right. Well, I'm going to  
10 ask that one last question, and move on.  
11 MS. WESTBY: No. That -- you're not asking  
12 him to look at this document and see what's on it.  
13 You're asking him to make a judgment about it.  
14 MR. GOSMAN: I'm asking him to look at the  
15 document and see what's on it.  
16 MS. WESTBY: No, you didn't.  
17 MR. GOSMAN: Yes, I did.  
18 MS. WESTBY: I'm instructing him not to  
19 answer.  
20 BY MR. GOSMAN:  
21 Q. Officer, is there anything on that -- if  
22 there is anything on that document that indicates that  
23 the officers were to wait for the occupant to open the  
24 door before employing the ramp, would I be able to find  
25 it?

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1 MS. WESTBY: Object to the form of the  
2 question. No. He cannot answer that question.  
3 BY MR. GOSMAN:  
4 Q. Where is it on the document?  
5 MS. WESTBY: He cannot answer that question.  
6 MR. GOSMAN: Of course he can. You know he  
7 can.  
8 MS. WESTBY: No, he can't.  
9 MR. GOSMAN: Yes, he can. As a matter of  
10 fact, you're going to win this argument simply because  
11 the document speaks for itself. So we'll move on.  
12 BY MR. GOSMAN:  
13 Q. It is true that Exhibit 10 also states, "If  
14 the father shows up, he stays in the lobby." Do you  
15 see that?  
16 A. Tom Wachsmuth stays in the lobby, uh-huh.  
17 Q. Did that statement take place or discussion  
18 take place?  
19 A. I believe so.  
20 Q. Why?  
21 MR. THOMPSON: Object as to form.  
22 MS. WESTBY: Join.  
23 MR. GOSMAN: Yeah, why is it, a tough  
24 question.  
25 MR. THOMPSON: Well, why did the discussion

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1 take place? Who?  
2 MR. GOSMAN: As a matter of fact, that's a  
3 good question.  
4 BY MR. GOSMAN:  
5 Q. Why was Tom Wachsmuth to be kept in the lobby  
6 and not have any participation?  
7 A. We didn't want to treat Tom any differently  
8 than we would anybody else. We wouldn't allow any  
9 other suspect's parent to come into the scene of a  
10 search warrant if they showed up. We'd ask them to  
11 stay in the lobby of the police department and wait  
12 also.  
13 Q. Even though Tom Wachsmuth was a DCI agent and  
14 was the father of the boy that was the subject of the  
15 warrant?  
16 A. Again, we didn't want to treat him any  
17 differently, better or worse.  
18 Q. All right. Would you agree with me that Tom  
19 Wachsmuth could have been a valuable source of  
20 intelligence concerning where his son was and what was  
21 going on?  
22 MR. THOMPSON: Objection as to form.  
23 MS. WESTBY: Join.  
24 THE WITNESS: I don't know.  
25

<p>MIKE CHRETIEN - October 5, 2010 Direct Examination by Mr. Gosman</p> <p>1 BY MR. GOSMAN: 2 Q. All right. Why did this conversation come 3 up? Was there any concern about Tom Wachsmuth showing 4 up that night? 5 A. I think there was just concern in general 6 that a fellow law enforcement officer was somehow 7 connected to this, be it just by relation or whatever. 8 And that we wanted to do things right. We wanted to do 9 things -- we didn't want to show any favoritism, you 10 know. We didn't want to do anything differently than 11 we would for anyone else. 12 Q. All right. In fact, Officer Patterson had 13 suggested to Officer Miner that you -- involved Tom 14 Wachsmuth and talk and have him bring his son either 15 out or to the police station. And that would be a 16 better, simpler, easier way to handle this problem? 17 MR. THOMPSON: Objection. 18 MS. WESTBY: Object to form. 19 BY MR. GOSMAN: 20 Q. Did you know that? 21 A. I didn't know that Patterson had had that 22 conversation with Miner. 23 Q. Well, that would certainly explain why we had 24 that notation to the plan that Tom was to stay in the 25 lobby.</p>	<p>Page 181</p> <p>MIKE CHRETIEN - October 5, 2010 Direct Examination by Mr. Gosman</p> <p>1 all these plans in order to provide for the safety, not 2 only of the officers, but of the occupants of the home, 3 correct? 4 A. Yes. 5 Q. And can you tell me why it would have been 6 unsafe for Officer Wachsmuth, Tom, to have gone with 7 the officers to the house and talked his son out the 8 front door? 9 MR. THOMPSON: Objection as to form. 10 MS. WESTBY: Join. 11 THE WITNESS: I can tell you the reason we 12 didn't do that is because we wouldn't do that for any 13 other suspect. Again, we were going to treat Tom and 14 his son just like we would any other person. No 15 special treatment. 16 BY MR. GOSMAN: 17 Q. Well, wouldn't it have been safer for you to 18 have done that in any other situation where you are 19 actually threatening to use a SWAT-type entry into 20 someone's home if the father was available and 21 cooperative and had information that would have made 22 this easier to get the suspect out of the house? 23 MS. WESTBY: Object to the form. 24 MR. THOMPSON: Join. 25 MR. GOSMAN: That was a bad question. I'll</p>	<p>Page 183</p>
<p>MIKE CHRETIEN - October 5, 2010 Direct Examination by Mr. Gosman</p> <p>1 MR. THOMPSON: Objection as to form. 2 MS. WESTBY: Join 3 THE WITNESS: You're speculating. I have no 4 idea. I didn't write it. 5 BY MR. GOSMAN: 6 Q. The conversation did occur, though, correct? 7 MR. THOMPSON: Objection to form. He just 8 said he didn't know. 9 THE WITNESS: Which conversation? 10 MR. GOSMAN: That's a good point. 11 BY MR. GOSMAN: 12 Q. The conversation there in the station before 13 the raid was put into effect regarding Tom Wachsmuth? 14 A. We did talk about we would defer to Tom, come 15 to the LEC -- or lobby of the police department and 16 wait. 17 Q. Were you concerned that Tom Wachsmuth might 18 suggest to you an alternative to a SWAT-type entry into 19 his son's home that night if you talked to him? 20 MR. THOMPSON: Object as to form. 21 MS. WESTBY: Join 22 THE WITNESS: No, that wasn't a concern of 23 ours. 24 BY MR. GOSMAN: 25 Q. You were conducting all these operations and</p>	<p>Page 182</p> <p>MIKE CHRETIEN - October 5, 2010 Direct Examination by Mr. Gosman</p> <p>1 give you that. 2 BY MR. GOSMAN: 3 Q. Go ahead, though, if you can. 4 A. Again, I don't know that we would consider 5 that as an option. 6 Q. In all your SWAT training, you never learned 7 that you were to use the SWAT entry as an entry of last 8 resort? 9 A. I didn't say that. 10 MS. WESTBY: Object. 11 BY MR. GOSMAN: 12 Q. Is that true? Isn't the SWAT entry an entry 13 of last resort? 14 MS. WESTBY: Object to the form. 15 MR. THOMPSON: Join. 16 THE WITNESS: No. 17 BY MR. GOSMAN: 18 Q. All right. If you have other means of 19 effecting an arrest and accomplishing the objectives of 20 officer safety, you would certainly employ those means 21 before you would place a SWAT team on the location and 22 enter the residence dynamically? 23 MS. WESTBY: Object to the form. 24 MR. THOMPSON: Join. 25 THE WITNESS: Again, it depends on the</p>	<p>Page 184</p>

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1 situation. And as I've stated before, the decision to  
2 do things the way we did then, was based on, we wanted  
3 to do what was safest for everyone involved: Officers,  
4 occupants, suspects, whatever. We didn't want to show  
5 any favoritism one way or the other towards Tom or his  
6 family.  
7 BY MR. GOSMAN:  
8 Q. Well, that sounds like two different things.  
9 On one hand, you're talking about doing things as  
10 safely as possible. And on the other hand, you're  
11 talking about not showing any favoritism to Tom  
12 Wachsmuth. Which was it?  
13 MS. WESTBY: Object to the form of the  
14 question.  
15 MR. THOMPSON: Join.  
16 THE WITNESS: Both those were considerations.  
17 BY MR. GOSMAN:  
18 Q. All right. Okay. Let's go ahead and take  
19 the list of officers on Exhibit 10. I want you to go  
20 through that list and review everyone's role and then  
21 let me know if there are any inaccuracies in that list.  
22 MS. WESTBY: I'm sorry. I lost my train of  
23 thought. I didn't hear that.  
24 MR. GOSMAN: If there are any inaccuracies in  
25 the list that's mentioned or written on Exhibit 10 that

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1 announcing, correct?  
2 A. Yes.  
3 Q. He probably went through the door first?  
4 A. I believe that's accurate.  
5 Q. And whether he went through the door first or  
6 not, it was most likely that either Chapman, who  
7 knocked on the door, or Miner, who had the battering  
8 ram, went through the door first, correct?  
9 A. It wouldn't have been Miner.  
10 Q. Miner, okay. And why is that?  
11 A. Because he was holding the ram.  
12 Q. Okay.  
13 A. He would have had to place it down and got in  
14 behind us.  
15 Q. So it would be fair to say Miner came in last  
16 possibly?  
17 A. Most likely. Again, I don't know that for  
18 sure because he was behind me.  
19 Q. Okay. He was behind you --  
20 A. I can say he was behind me.  
21 Q. Okay. After you entered the room?  
22 A. (Witness nods head.)  
23 Q. Where was Danzer relative to you? He  
24 testified last night that he was in the middle of the  
25 group.

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1 has the officers and their assignments.  
2 THE WITNESS: It looks like I remember it.  
3 The assignments are consistent.  
4 BY MR. GOSMAN:  
5 Q. All right. So to the best of your ability,  
6 where were the officers in order as they entered the  
7 house that evening?  
8 MR. THOMPSON: Objection as to the form.  
9 Asked and answered.  
10 MS. WESTBY: Object to the form of the  
11 question.  
12 BY MR. GOSMAN:  
13 Q. I think you described you were second or  
14 third. And maybe you have gone over this.  
15 MS. WESTBY: Yes.  
16 BY MR. GOSMAN:  
17 Q. Do you know where anybody was?  
18 MR. THOMPSON: He's told you about the entry  
19 team, and he said he didn't know where anybody else was  
20 at because he couldn't observe them.  
21 MS. WESTBY: He was second, third, or fourth.  
22 He couldn't tell you for sure. We've gone over and  
23 over this.  
24 BY MR. GOSMAN:  
25 Q. Okay. Chapman had the duty of knocking and

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1 A. He was -- again, the front four would have  
2 been Chapman, who I'm fairly sure was first, Danzer and  
3 Hall and I were two, three, and four in some order. I  
4 believe I was four. I'm not -- but I'm not sure on  
5 that.  
6 Q. Okay. And then we know that Miner was behind  
7 you?  
8 A. He was -- when I say he was behind me, he  
9 came into the house after me. Whether he was the  
10 person that was directly behind me, I don't know.  
11 Q. Okay. And so what other officers do we have  
12 in that entry team?  
13 A. Roy Eckerdt.  
14 Q. Okay. So Eckerdt was probably behind you,  
15 then?  
16 A. Probably.  
17 Q. All right. Once you entered the house, what  
18 did you do?  
19 MR. THOMPSON: Objection. Asked and  
20 answered.  
21 THE WITNESS: I went past the living room  
22 because there were -- there was an officer or officers  
23 that were -- that had already taken care of the  
24 occupant that was in the house in the living room. The  
25 next area that we would have gone to would have been

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1 the bedrooms. Another officer went into the -- maybe  
2 two officers went into the northeast bedroom, the one  
3 that we'd identified as Bret and Tricia's. I went to  
4 the next door, which turned out to be the bathroom.  
5 And that door, I was facing east.  
6 BY MR. GOSMAN:  
7 Q. Okay. So you went into the bathroom, clearly  
8 that didn't take much time. The other officers were  
9 clearing the bedrooms?  
10 A. Somebody had gone into the bedroom to my left  
11 after I had gone into the bathroom there. Somebody had  
12 gone into the bedroom on the right. I think I might  
13 have gone in there with them to look in the closet.  
14 And then I came back out into that area between the two  
15 bedrooms and the bathroom. And someone else had gone  
16 to the kitchen.  
17 Q. Okay. Did you all meet back in that area  
18 then?  
19 MS. WESTBY: Object to the form.  
20 THE WITNESS: No. I was in that area. There  
21 were officers in the living room. There were officers  
22 in the kitchen. There was a officer or officers still  
23 in what we had identified as their bedroom, the  
24 northeast bedroom.  
25

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1 BY MR. GOSMAN:  
2 Q. Let me see if I can find a sheet of paper. I  
3 know I've got one here. Well, I don't know that I've  
4 got a piece of paper here.  
5 Okay. We're going to mark this Plaintiff's  
6 Exhibit 40. We'll have to get a stamp on that in a  
7 minute when you're done.  
8 Officer, do me the honor of drawing a diagram  
9 of the house based on what you recollect from what you  
10 saw while you were in the house. And then let me know  
11 where you stopped after you had finished the sweep of  
12 the house.  
13 A. Okay. I'm done drawing.  
14 Q. Okay. Put an X where you were located.  
15 A. (witness complies.)  
16 Q. This was after the house was cleared?  
17 A. Once we were done sweeping the upstairs,  
18 that's where I was located. Right there.  
19 Q. All right. And where are -- I see. The  
20 stairs to the basement --  
21 A. The stairs to the basement would be -- there  
22 was a door there down from the kitchen.  
23 MR. GOSMAN: Do you have an exhibit sticker?  
24  
25

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1 (Exhibit 40 marked)  
2 BY MR. GOSMAN:  
3 Q. All right. Now at some point, Ms. Wachsmuth  
4 led the officers down the stairs, is that true?  
5 A. She went down the stairs in front of us.  
6 Q. Just prior to -- where was Ms. Wachsmuth when  
7 you found yourself in the position you've marked on  
8 Exhibit 40 with the X?  
9 A. She was in the living room. I don't  
10 remember -- it seems to me like she was seated over  
11 here somewhere.  
12 Q. Do you know that's where the couch was?  
13 A. I thought the couch was over here. But for  
14 some reason, I remember her being seated over here.  
15 Q. Okay. Let's go ahead and draw in the couch  
16 for now.  
17 A. (witness complies.)  
18 Q. And at the time that you asked Ms. Wachsmuth  
19 to -- or at the time that the decision was made to go  
20 down the stairs, let's start with that, where were the  
21 other officers? Had they all gathered together again  
22 after clearing the upstairs portion of the house?  
23 A. Again, there was at least one in this  
24 bedroom. There were one or two in the living room.  
25 Q. All right. Where were --

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1 A. One or two to the kitchen.  
2 Q. Where were they in the living room, if you  
3 know? Roughly?  
4 A. I seem to remember them being over here. In  
5 this area with Tricia being seated on something over  
6 here.  
7 Q. Okay. You put a little teeny dot. Let's go  
8 ahead and make some larger X's and a little caption off  
9 to the side that says Tricia?  
10 A. How about TW?  
11 Q. That's fine. Thank you.  
12 A. Okay.  
13 Q. All right. How many officers?  
14 A. I don't know.  
15 Q. Do you know who the officers were?  
16 A. I don't remember specifically.  
17 Q. Were you -- were you looking at the officers  
18 as you were standing in Position X?  
19 A. Not specifically, no.  
20 Q. Did you see what they were doing?  
21 A. They were just standing in the living room  
22 with their backs to me.  
23 Q. They had their backs to you. Do you know  
24 what they were doing with their weapons?  
25 A. They were slung, if they had a long gun. The

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1 guys with pistols, I don't know.  
2 Q. Did you see anyone pointing a weapon at  
3 Tricia Wachsmuth at that time?  
4 A. No.  
5 Q. As far as you know, I think you've testified  
6 to this, no one ever pointed a weapon at Ms. Wachsmuth;  
7 is that correct?  
8 A. I didn't testify to that.  
9 Q. All right. Well, what is your testimony on  
10 that question?  
11 A. That I didn't see what officer was dealing  
12 with her or how they conducted himself. Whether they  
13 were pointing their weapon at her for a second or five  
14 seconds or -- I don't know.  
15 Q. Okay.  
16 A. Nobody was standing around with their weapon  
17 pointed at her at this point.  
18 Q. Okay. And then after that point, were you --  
19 I think -- when you say "that point" in Exhibit 40,  
20 when you have gone back in to the hallway, the only  
21 other officers in the picture were those standing right  
22 next to Tricia Wachsmuth?  
23 A. Those are the ones you asked me about, I said  
24 there was one in the bedroom.  
25 Q. Okay.

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1 A. At least one. And I told you there was one  
2 or two in the kitchen, too.  
3 Q. Okay. One or two in the kitchen.  
4 A. And there may have been one in here.  
5 Q. Okay. Now, did Officer Miner have a long gun  
6 or pistol?  
7 A. I don't remember. It would have been  
8 difficult to use the ram with a long gun. But that  
9 doesn't mean he didn't sling it over his shoulder. I  
10 don't know. I just don't remember.  
11 Q. You talked about one two, three, four, five,  
12 six, possibly six officers in the house at this time.  
13 Is that how many you remember being in the house,  
14 roughly, at that time?  
15 A. Roughly.  
16 Q. Did other officers come in the house shortly  
17 thereafter?  
18 A. McCaslin and Kent would have come in as soon  
19 as they were finished deploying the flashbang on the  
20 northeast bedroom.  
21 Q. Do you know where they were?  
22 A. I don't specifically.  
23 Q. Do you know -- were they in the living room?  
24 A. Since they were the last two in the front  
25 door, that's where I would think they would be.

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1 Q. And they were also tasked with controlling  
2 Tricia Wachsmuth, were they not?  
3 A. That was the plan.  
4 Q. Did they carry out the plan?  
5 MS. WESTBY: If you know.  
6 THE WITNESS: I'm not sure who secured her.  
7 BY MR. GOSMAN:  
8 Q. When the decision was made to go downstairs,  
9 were the officers all gathered together in the hall  
10 area around you?  
11 A. No.  
12 Q. Did you issue the command to go down the  
13 stairs and clear the basement?  
14 A. I made the decision to go down the stairs.  
15 Q. Did you issue a command?  
16 MR. THOMPSON: Objection as to form.  
17 MS. WESTBY: Join.  
18 THE WITNESS: To who?  
19 BY MR. GOSMAN:  
20 Q. Well, you're the team leader, so I'm assuming  
21 it's to the other officers.  
22 A. It would have been my decision to go  
23 downstairs.  
24 Q. That wasn't so hard, was it, officer?  
25 MS. WESTBY: I need to take a break for a

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1 minute, so...  
2 MR. GOSMAN: All right. That's fine.  
3 (Recess taken 3:37 to 3:45  
4 p.m., October 5, 2010)  
5 BY MR. GOSMAN:  
6 Q. Okay. Officer, if you don't feel comfortable  
7 placing the location of the other team members on this  
8 Exhibit 40 at the time that you were located where  
9 you've marked an X on the exhibit, then let's just say  
10 so and go on.  
11 Otherwise, I'd like you to put a location for  
12 every officer that you knew about at that moment.  
13 A. There's only one that I'm sure.  
14 Q. Okay. And who was that?  
15 A. And that was Danzer. I know that he was  
16 there because he told me that the door to the stairs  
17 was unlocked.  
18 Q. Okay. What happened next? You're at this  
19 point in the house. What happened next?  
20 A. I asked Tricia if there was anyone else in  
21 the house or if there was anyone else downstairs. I  
22 don't remember the exact wording.  
23 Q. Yes.  
24 A. She hesitated, and then said, "No."  
25 Q. All right. Then what happened?

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1 A. I asked her more firmly, "Is anyone  
2 downstairs or is Bret downstairs?" She answered more  
3 quickly, no.  
4 Q. Go ahead. Let's just carry this out till we  
5 get to the stairs.  
6 A. At that point, I had two contradicting  
7 impressions as to her answer. The first time she said  
8 no, it seemed like she had to think about it. The  
9 second time she said no she answered right away. I  
10 wanted to confirm that there was no one downstairs. So  
11 when she said no the second time, I said, "Good.  
12 You're going first." To call her bluff.  
13 Q. Okay. All right. Well, you not only called  
14 her bluff, but you sent her downstairs first, correct?  
15 A. No.  
16 Q. All right. What happened next?  
17 A. Before I knew it, she got up, walked over to  
18 the stairs, and started going down and we followed her.  
19 Q. I see. So it was a voluntary movement on her  
20 part to lead you downstairs into the basement?  
21 MS. WESTBY: Object to the form --  
22 BY MR. GOSMAN:  
23 Q. Is that what you're saying?  
24 MS. WESTBY: Object to the form of the  
25 question.

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1 MR. THOMPSON: Join.  
2 MR. GOSMAN: Okay.  
3 MS. WESTBY: You can go ahead and answer.  
4 THE WITNESS: Again, the second time I asked  
5 her, she said no quickly. As soon as she got done  
6 saying no quickly, the first thing I said was, "Good,  
7 you're going down first," to call her bluff. She got  
8 up, went right to the stairs and started going down.  
9 BY MR. GOSMAN:  
10 Q. Did you communicate with her before you got  
11 down to the bottom of the stairs?  
12 A. No.  
13 Q. So you didn't tell her that you were just  
14 bluffing her?  
15 A. No, I didn't. It happened pretty quick.  
16 Q. Okay. Now, in your training as a SWAT  
17 officer, did you understand any circumstances where  
18 a -- an individual suspect should be used as a shield  
19 in front of the officers to take them into areas of the  
20 house that hadn't been cleared?  
21 MR. THOMPSON: Object as to form.  
22 MS. WESTBY: Join.  
23 THE WITNESS: We didn't use anyone as a human  
24 shield.  
25

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1 BY MR. GOSMAN:  
2 Q. Well, again, that's fine. But that's not  
3 what I asked  
4 A. Okay. What did you ask?  
5 Q. I asked, was there anything in your training  
6 as a SWAT commander that led you to believe it was  
7 appropriate in any way to use an individual as a human  
8 shield to clear areas of a home that had not been  
9 cleared?  
10 MS. WESTBY: Object as to the form of the  
11 question.  
12 MR. THOMPSON: Join.  
13 THE WITNESS: No.  
14 BY MR. GOSMAN:  
15 Q. In fact, would it be fair to say, Officer,  
16 that you knew that was just wrong?  
17 MS. WESTBY: Object to the form of the  
18 question.  
19 MR. THOMPSON: Join.  
20 MS. WESTBY: Knew what was wrong?  
21 MR. GOSMAN: To use a suspect as a human  
22 shield to effect a clearing of a home in a SWAT-type  
23 situation.  
24 THE WITNESS: That was never discussed in any  
25 SWAT training that I attended.

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1 BY MR. GOSMAN:  
2 Q. What do you think? Do you think that's right  
3 or wrong?  
4 MR. THOMPSON: Object as to form.  
5 MS. WESTBY: Join.  
6 THE WITNESS: We didn't use Tricia as a human  
7 shield.  
8 BY MR. GOSMAN:  
9 Q. Well, we've already talked about that. You  
10 got to answer the question as I ask it, though?  
11 A. No.  
12 Q. You don't think it's wrong?  
13 A. No. That's not what I meant. I'm sorry.  
14 Q. Okay. Is it --  
15 A. Yes, I would say that it would be wrong to  
16 use someone as a human shield.  
17 Q. Is it your testimony, then, that you didn't  
18 know whether there was someone in the basement when you  
19 followed Tricia down those stairs?  
20 MS. WESTBY: Object to the form of the  
21 question.  
22 MR. THOMPSON: Join.  
23 THE WITNESS: When I called her bluff, the  
24 quickness with which she got up to go down the stairs  
25 led me to believe that there was no threat.

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1 BY MR. GOSMAN:  
2 Q. Okay. Let's see here. when Tricia started  
3 for the stairs, did you follow immediately after her?  
4 A. I walked towards the stairs after she did. I  
5 wouldn't say I was immediately after her, though.  
6 Q. All right. Well, somebody was immediately  
7 after her. Was it Danzer?  
8 A. Danzer was the officer that was closest to  
9 the stairs.  
10 Q. Was he the officer that followed her down the  
11 stairs?  
12 A. I don't remember for sure that he was the  
13 first officer.  
14 Q. Well, who else might have been?  
15 MR. THOMPSON: Objection as to form.  
16 THE WITNESS: I don't know.  
17 BY MR. GOSMAN:  
18 Q. All right. So you're standing in the  
19 hallway; you've presented a bluff to Ms. Wachsmuth.  
20 You've seen Danzer standing at the head of the stairs.  
21 You saw Ms. Wachsmuth get up and walk down the stairs  
22 and apparently march down the stairs?  
23 A. She walked down the stairs.  
24 Q. Did she wait for everybody to form a line  
25 behind her?

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1 A. No, we just walked down the stairs behind  
2 her.  
3 Q. All right. And so you had a clear view of  
4 Ms. Wachsmuth from the time she got up to walk down the  
5 stairs until she actually started in the stairwell  
6 itself heading down the stairs, correct?  
7 A. I think so.  
8 Q. And you're telling me you can't remember what  
9 officers followed her down the stairs?  
10 MS. WESTBY: Object to the form of the  
11 question.  
12 MR. THOMPSON: Join.  
13 THE WITNESS: I remember going down the  
14 stairs. I know that Danzer and Chapman also went down  
15 the stairs. What order we were in, I don't remember  
16 who was first, second, third. I don't recall.  
17 BY MR. GOSMAN:  
18 Q. You didn't put out your hand to try to block  
19 Ms. Wachsmuth from going down the stairs, did you?  
20 A. No.  
21 Q. Did you call out to Officer Danzer and say,  
22 "Stop her"?  
23 A. No.  
24 Q. All right. Where was Officer Chapman then?  
25 A. I think he was in the kitchen as well. But I

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1 don't know for certain.  
2 Q. Okay. And I realize that we've only taken  
3 two depositions, yours and officer Danzer. But so far  
4 neither you nor Officer Danzer know where anybody was  
5 during this clearing of the house.  
6 MR. THOMPSON: Object as to form. Misstates  
7 the testimony that's been provided by both witnesses.  
8 THE WITNESS: Danzer testified as to where he  
9 was. I testified as to where I was.  
10 MS. WESTBY: There's no question pending.  
11 BY MR. GOSMAN:  
12 Q. Okay. So Danzer did testify that he followed  
13 Ms. Wachsmuth down the stairs, correct? He was the  
14 first after Ms. Wachsmuth down the stairs?  
15 A. That's what he said.  
16 Q. Were you behind Danzer?  
17 MS. WESTBY: Object to the form of the  
18 question. Asked and answered.  
19 MR. THOMPSON: Join.  
20 THE WITNESS: I was behind Danzer. I don't  
21 know if I was directly behind Danzer or not though.  
22 BY MR. GOSMAN:  
23 Q. There may have been one other officer between  
24 you and Danzer, correct?  
25 A. Correct.

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1 Q. And there were other officers in the  
2 procession that followed Tricia Wachsmuth down the  
3 stairs?  
4 MS. WESTBY: Object to the form.  
5 BY MR. GOSMAN:  
6 Q. Other than you, Danzer, and Chapman?  
7 MR. THOMPSON: Object as to form.  
8 THE WITNESS: There was at least one officer  
9 behind me.  
10 BY MR. GOSMAN:  
11 Q. Could there have been two or three?  
12 A. I don't think so based on the size of the  
13 basement. But I don't remember.  
14 Q. All right. Let's go ahead and prepare  
15 another diagram with -- we'll call it Exhibit 41. I  
16 want you to put Tricia Wachsmuth on the first or second  
17 step, and then I want you, to the best of your  
18 recollection, locate the other officers, whether you  
19 can identify them by name or not.  
20 Could we borrow another paper?  
21 MR. THOMPSON: No.  
22 MR. GOSMAN: Okay.  
23 MS. WESTBY: I mean it.  
24 MR. GOSMAN: Yeah. Well, we can find other  
25 paper, I assume.

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1 MR. THOMPSON: I can draw this based on his  
2 testimony if you want. It will look something like  
3 this.  
4 MR. GOSMAN: Actually, he does a nice job  
5 with that drawing, so let's go ahead and let him do  
6 that.  
7 MS. WESTBY: Before we get started, are you  
8 asking him just to draw the stairs or do you want him  
9 to draw the whole diagram --  
10 MR. GOSMAN: Of the house? The stairs and  
11 kitchen are all we need, because we're going to put  
12 Tricia Wachsmuth on the stairs as she's starting down  
13 the stairs.  
14 THE WITNESS: Okay. You want her --  
15 BY MR. GOSMAN:  
16 Q. I tell you what. Let's put her in the stairs  
17 where she stopped and pushed her hands against the wall  
18 and leaned against the wall.  
19 A. I don't remember her stopping.  
20 Q. You don't remember her stopping?  
21 A. No.  
22 Q. Okay. Let's just put her in the middle of  
23 the stairs.  
24 Okay. Now, we know where Danzer was based on  
25 his testimony, correct?

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1 A. He was the first officer down the stairs.  
2 Q. So let's go ahead and put Danzer where he said  
3 he was, and that's directly behind Tricia. And was  
4 there an officer between you and Danzer?  
5 A. I don't remember.  
6 Q. All right. How far behind Tricia were you on  
7 the stairs?  
8 A. I don't remember. There was at least Danzer  
9 between me and her.  
10 Q. And there were -- at least one other officer  
11 behind you?  
12 A. Yes.  
13 Q. Okay. Now, could there have been as many as  
14 three? Do you know?  
15 A. I don't.  
16 Q. You don't know?  
17 A. No.  
18 Q. Is there -- did the entry team have any  
19 instructions that there was a group that was assigned  
20 to clear the upper section of the home and a group  
21 assigned to clear the basement?  
22 A. Not specifically.  
23 Q. The entry team was assigned to clear the  
24 house, correct?  
25 A. Yes.

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1 Q. All right. Would it be safe to assume that  
2 the entry team went downstairs?  
3 A. No.  
4 MR. THOMPSON: Object as to form.  
5 BY MR. GOSMAN:  
6 Q. Why not?  
7 A. We knew that it wasn't a very big area.  
8 Q. Was there any communication on that subject?  
9 A. No. But the whole entry team didn't come  
10 into the bathroom with me either.  
11 Q. Well -- okay. But I mean, you were going  
12 downstairs. You didn't know how big the basement was  
13 as you were going down the stairs.  
14 A. I just told you, we knew it was small.  
15 Q. But there was no discussion about who was or  
16 was not to come down the stairs?  
17 MS. WESTBY: Object to the form of the  
18 question.  
19 THE WITNESS: Again, not specifically.  
20 BY MR. GOSMAN:  
21 Q. When you say "not specifically," let me know  
22 what you mean. What discussion was there?  
23 A. That we would clear the house.  
24 Q. That's it?  
25 A. That's it.

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1 Q. All right. Now, while you were on those  
2 stairs, did anyone point their weapon at Ms. Wachsmuth  
3 that you saw?  
4 A. No.  
5 Q. And that would include yourself?  
6 A. Absolutely.  
7 Q. And it's your testimony that you didn't  
8 direct Ms. Wachsmuth to go downstairs, you simply  
9 called her bluff?  
10 A. I did.  
11 Q. How was she supposed to know the difference?  
12 MR. THOMPSON: Object as to form.  
13 BY MR. GOSMAN:  
14 Q. Between directing her down the stairs ahead  
15 of a group of officers and bluffing her into confessing  
16 whether or not her husband was in the basement?  
17 MR. THOMPSON: Objection as to form.  
18 MS. WESTBY: Join.  
19 THE WITNESS: I don't know what she was  
20 thinking.  
21 BY MR. GOSMAN:  
22 Q. You didn't give her any signal that would  
23 have clarified that what you were doing was a bluff?  
24 MR. THOMPSON: Objection as to form.  
25 MS. WESTBY: Join.

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1 THE WITNESS: Again, the reason that I told  
2 her what I told her was to call her bluff. When I saw  
3 that she was willing to go down the stairs, that made  
4 me think that there was no threat.  
5 BY MR. GOSMAN:  
6 Q. Officer, how could she possibly have been  
7 willing to go down the stairs if she didn't know that  
8 you were bluffing her when you told her to go down the  
9 stairs ahead of the officers?  
10 MR. THOMPSON: Object as to form. You're  
11 starting to argue with the witness. And we'll stop the  
12 deposition now.  
13 MR. GOSMAN: All right. Well, let's not do  
14 that.  
15 MS. WESTBY: And you're asking him what's  
16 going through her mind. What she's thinking.  
17 MR. GOSMAN: Come on. Okay. Let's repeat  
18 the question.  
19 (The record was read as  
20 requested.)  
21 MR. THOMPSON: Now I object that it makes no  
22 sense.  
23 MR. GOSMAN: I agree.  
24 BY MR. GOSMAN:  
25 Q. Okay. Officer, how could Tricia Wachsmuth

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1 have known that you were bluffing her when you told her  
2 to go down the stairs?  
3 MR. THOMPSON: Objection. Calls for  
4 speculation.  
5 MS. WESTBY: He already told you to that  
6 exact same question that he could not possibly know  
7 what she was thinking. Or what was going through her  
8 mind. He answered that specific question.  
9 MR. GOSMAN: Okay.  
10 BY MR. GOSMAN:  
11 Q. Officer, you testified also that when you saw  
12 that she was willing to go down the stairs on her  
13 own -- you aren't telling me that she was volunteering  
14 to go down the stairs, were you?  
15 A. She appeared willing to show us that there  
16 was no danger by going down the stairs.  
17 Q. I see. Okay. And that's different than  
18 saying that she was willing to go down the stairs?  
19 MS. WESTBY: Object to the form of the  
20 question.  
21 THE WITNESS: I don't know what she was  
22 feeling. She knew that there was no one else in the  
23 house. That's why she went down the stairs.  
24 BY MR. GOSMAN:  
25 Q. Okay. You don't think that she would have --

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1 do you think she would not have gone down the stairs if  
2 she'd thought there was someone down there?  
3 A. Absolutely.  
4 Q. Even though you're ordering her to go down  
5 the stairs?  
6 A. I didn't order.  
7 MR. THOMPSON: Object as to form.  
8 MS. WESTBY: Join.  
9 BY MR. GOSMAN:  
10 Q. Well, your words do speak for themselves.  
11 You directed her to go into the basement, correct?  
12 A. I called her bluff.  
13 Q. You directed her to go into the basement --  
14 MS. WESTBY: Object to the form of the  
15 question.  
16 MR. THOMPSON: Object to form.  
17 MS. WESTBY: That's enough. He's answered  
18 the question.  
19 MR. GOSMAN: I called her bluff? That's not  
20 an answer to the question.  
21 MS. WESTBY: Yes, it is.  
22 MR. GOSMAN: He's answered the question, and  
23 I stated that he had not answered the question when he  
24 said he called her bluff.  
25 MS. WESTBY: He will continue to answer the

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1 question the same way, because it's the truthful,  
2 honest answer. And he's going to give it to you every  
3 single time that you ask him, whether you ask it  
4 another three or four times. And if you continue to  
5 ask it, then we'll just go to the Court. And  
6 honestly -- honestly, it's ridiculous.  
7 MR. GOSMAN: What was my last question?  
8 (The record was read as  
9 requested.)  
10 BY MR. GOSMAN:  
11 Q. All right. You called her bluff by directing  
12 her to go to the basement?  
13 MS. WESTBY: Object to form.  
14 MR. GOSMAN: You know, as a matter of fact,  
15 it's on the record. I don't know why I'm doing this.  
16 Let's go on.  
17 MR. THOMPSON: Can you read that back to me?  
18 MR. GOSMAN: Yeah.  
19 THE WITNESS: Did you need to put a sticker  
20 on my stairs?  
21 MR. GOSMAN: We do.  
22 (Exhibit 41 marked)  
23 MR. GOSMAN: Well, I'm glad I'm providing a  
24 little humor.  
25 MS. WESTBY: You've just made me rummy.

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1 You've worn me down to the point where I'm rummy.  
2 BY MR. GOSMAN:  
3 Q. Okay. Back to Exhibit 10 for a minute.  
4 There is a note on the document that says it's PPD Tac  
5 I coded. Can you tell me what that means?  
6 A. PPD Tac I is our -- it's an internal channel.  
7 And coded means that we -- that the transmissions are  
8 somehow encrypted. I don't know how else to explain  
9 that. I'm not the radio guy.  
10 Q. Okay. And who is Scott Bagnell?  
11 A. He is the -- he is an EMT. He would have  
12 probably been the crew chief. He's a senior EMT at the  
13 hospital.  
14 Q. The hospital was contacted?  
15 A. Uh-huh.  
16 Q. For standby?  
17 A. Uh-huh.  
18 MS. WESTBY: You have to answer yes.  
19 THE WITNESS: I'm sorry. Yes.  
20 BY MR. GOSMAN:  
21 Q. And let's look on the second page of  
22 Exhibit 10 for a moment. You didn't prepare this  
23 document. Was this information part of the information  
24 that was discussed, or is this information that  
25 occurred -- that was discussed after the entry?

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1 A. I don't know.  
2 Q. When you went into the basement, did you know  
3 that there was a crawl space in the basements?  
4 A. I don't remember.  
5 Q. Okay.  
6 A. I don't remember knowing that ahead of time.  
7 Q. As you stood at the bottom of the basement,  
8 what became of Ms. Wachsmuth, or as she stood at the  
9 bottom of the basement stairs, what became of  
10 Ms. Wachsmuth?  
11 A. She stood at the bottom of the stairs, Danzer  
12 and I and whoever else was on the stairs with us walked  
13 by her. The last person walking down the stairs put  
14 her in handcuffs. I don't remember who that was,  
15 though.  
16 Q. Did you find any drugs at the Wachsmuth  
17 residence that were -- other than the marijuana, that  
18 were not prescription drugs?  
19 MR. THOMPSON: Is the question for him?  
20 MR. GOSMAN: Yes.  
21 MR. THOMPSON: Object as to form.  
22 BY MR. GOSMAN:  
23 Q. Let me ask you this question: You weren't  
24 part of the evidence team; is that true?  
25 A. I was not.

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1 Q. You didn't search the house; is that true  
2 then?  
3 A. Correct.  
4 Q. Was there ever any question that Tricia  
5 Wachsmuth did not pose a threat to the officers?  
6 MS. WESTBY: Object to the form of the  
7 question.  
8 MR. THOMPSON: Join.  
9 THE WITNESS: Let me make sure I understand  
10 the question. Was there ever any discussion that  
11 Tricia Wachsmuth did not pose a threat? Is that what  
12 you --  
13 BY MR. GOSMAN:  
14 Q. I didn't ask about discussion. Go ahead and  
15 tell me, was there any discussion about whether  
16 Ms. Wachsmuth presented a threat to the officers?  
17 A. She was an unknown threat. She's in a dope  
18 house.  
19 Q. Was there any objective evidence that  
20 Ms. Wachsmuth posed a threat to the officers?  
21 MS. WESTBY: Object to the form of the  
22 question.  
23 MR. THOMPSON: Join.  
24 THE WITNESS: The CI's knowledge of there  
25 being weapons throughout the house, whoever was in the

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1 house could potentially have access to those weapons.  
2 BY MR. GOSMAN:  
3 Q. In other words, other than the fact that  
4 Ms. Wachsmuth was in the house and there were weapons  
5 in the house, there's no evidence that she posed a  
6 threat to the officers?  
7 MS. WESTBY: Object to the form of the  
8 question.  
9 MR. THOMPSON: Join.  
10 THE WITNESS: That's not what I said.  
11 BY MR. GOSMAN:  
12 Q. What threat did she pose?  
13 A. The same threat that anyone who, again, was  
14 in a dope house where there were weapons would pose to  
15 law enforcement.  
16 Q. Okay. And was it the same threat that Bret  
17 Wachsmuth posed?  
18 A. Potentially.  
19 Q. Did you have any evidence that Tricia  
20 Wachsmuth had a criminal record?  
21 A. No, I don't think the Virginia Tech shooter  
22 had a criminal record either, though.  
23 Q. Okay. Did you have any evidence that Tricia  
24 Wachsmuth had ever been involved in a -- in any  
25 violence, had ever committed any violent act against

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1 another person?  
2 A. Not that I know of.  
3 Q. And did you have any of this information --  
4 any information about Tricia Wachsmuth before you  
5 entered the home that night?  
6 A. We had her name and where she worked. And we  
7 knew she was not at work.  
8 Q. And did you have any evidence that Bret  
9 Wachsmuth had a prior criminal record?  
10 A. No, we did not.  
11 Q. Did you have any evidence that Bret Wachsmuth  
12 had ever committed a violent act against any other  
13 person?  
14 A. No.  
15 Q. And when you entered the home, did  
16 Ms. Wachsmuth cooperate with the officers? Was she  
17 cooperative?  
18 MS. WESTBY: Object to the form of the  
19 question as vague.  
20 Go ahead.  
21 MR. THOMPSON: Join.  
22 THE WITNESS: Prior to me talking to her, I  
23 don't know what occurred.  
24 BY MR. GOSMAN:  
25 Q. Okay. When you talked to her.

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1 A. She answered my questions.  
2 Q. Did she attempt to flee?  
3 A. No.  
4 Q. Did she make any effort to resist arrest?  
5 MR. THOMPSON: Once he entered the home?  
6 MR. GOSMAN: Yes  
7 THE WITNESS: Once we were inside, no.  
8 BY MR. GOSMAN:  
9 Q. Did you see anything that indicated to you  
10 that Tricia Wachsmuth posed a threat to the safety of  
11 any officer in that operation?  
12 A. The gun is in the bedroom, the gun on the --  
13 I don't remember the counter or shelf or whatever it  
14 was, between the living room and the kitchen.  
15 Q. All right. She didn't make a move for any of  
16 those guns, did she?  
17 A. Not to my knowledge.  
18 Q. Well -- and I asked -- and maybe you've  
19 answered the question as we I. But my question was:  
20 Did you see anything that Ms. Wachsmuth did that posed  
21 a threat to any officer in the house?  
22 MS. WESTBY: Objection.  
23 BY MR. GOSMAN:  
24 Q. I'm not talking about whether there were guns  
25 in the house. I'm talking about what Ms. Wachsmuth

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1 did.  
2 MS. WESTBY: Again, you don't like the  
3 answer. But the answer to that is that there were guns  
4 right there, right in her proximity. He gave you that  
5 answer.  
6 BY MR. GOSMAN:  
7 Q. What did she do that would have considered --  
8 would have been considered a threat to the safety of  
9 any officer in that operation?  
10 MS. WESTBY: Object to form.  
11 MR. THOMPSON: Join.  
12 THE WITNESS: I didn't see her do anything,  
13 partly as a result of our plan working.  
14 BY MR. GOSMAN:  
15 Q. Did you consult with Chief Feathers before  
16 this plan was executed?  
17 A. I believe I talked to him on the phone to let  
18 him know what I planned to do. What information I had  
19 at the time and why.  
20 Q. Did he see -- did you tell him that you  
21 planned to use a knock-and-announce and then deploy the  
22 battering ram immediately?  
23 MR. THOMPSON: Object as to form.  
24 BY MR. GOSMAN:  
25 Q. The door did not open immediately?

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1 MR. THOMPSON: Object to form.  
2 THE WITNESS: No, I didn't because that's not  
3 what we discussed.  
4 BY MR. GOSMAN:  
5 Q. Well, that's one of the things that's in your  
6 report though, correct?  
7 MS. WESTBY: And it's one of the things that  
8 when you asked him about inaccuracies in the report, he  
9 told you.  
10 THE WITNESS: I've already answered that  
11 question twice.  
12 BY MR. GOSMAN:  
13 Q. Well, the report speaks for itself. Did you  
14 tell him the same things that you said to him about  
15 your entry plan as are contained in the report, except  
16 to the extent that you've already corrected them on the  
17 record today?  
18 MS. WESTBY: Object to the form of the  
19 question.  
20 THE WITNESS: Substantially --  
21 BY MR. GOSMAN:  
22 Q. I'm talking about Exhibit I6.  
23 A. I understand. Substantially, I believe so.  
24 Q. All right. What did he say?  
25 A. I don't recall exactly. I'm sure that he

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1 asked some clarifying questions, asked the reasons why  
2 I made certain decisions.  
3 Q. What -- what did you tell him about the  
4 reasons why you made the decisions to use a SWAT-type  
5 entry on this home at that time?  
6 MS. WESTBY: Object to the form of the  
7 question, use of the term. That's your term.  
8 THE WITNESS: What reasons did I give him as  
9 to why I wanted to do things the way I wanted to do  
10 them?  
11 BY MR. GOSMAN:  
12 Q. Yes.  
13 A. It would have been the reasons that I talked  
14 about earlier, in that I felt the way that we did it  
15 was the safest way for everybody involved.  
16 Q. Did he ask you about whether it would have  
17 been appropriate to do a knock-and-talk or some kind of  
18 scenario that would have involved less than -- less  
19 force than the dynamic entry that was used for this  
20 particular operation?  
21 A. We discussed using Tom.  
22 Q. What did you discuss?  
23 A. Using Tom to do a knock-and-talk.  
24 Q. And?  
25 A. And we would not do that for anybody else.

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1 We cannot show special privileges to other people just  
2 because they are in the same profession that we are.  
3 Q. But you mentioned it to Chief Feathers in any  
4 event?  
5 A. We discussed it.  
6 Q. Other than the fact that it was something  
7 that you say would not have been extended to a regular  
8 citizen, was there a reason why using Tom Smith [sic]  
9 might not have worked or might not have accomplished  
10 exactly what you were trying to set out to do that  
11 night?  
12 MR. THOMPSON: Object to form.  
13 BY MR. GOSMAN:  
14 Q. Tom Wachsmuth.  
15 MS. WESTBY: Join  
16 THE WITNESS: Was there a reason besides that  
17 we wouldn't do it for anybody else?  
18 BY MR. GOSMAN:  
19 Q. Was there something about Tom Wachsmuth that  
20 made you concerned that -- or Bret Wachsmuth that made  
21 you concerned that if you simply called Tom and asked  
22 him to go get his son, that he would do that and it  
23 could be taken care of without the need for a dynamic  
24 entry?  
25 MR. THOMPSON: Object to form.

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1 MS. WESTBY: Join.  
2 THE WITNESS: No. My recollection is that we  
3 wouldn't do that for anybody else.  
4 BY MR. GOSMAN:  
5 Q. And why wouldn't you do it for anybody else?  
6 MR. THOMPSON: Asked and answered. Objection  
7 as to form.  
8 MS. WESTBY: Join. And vague. Speculation.  
9 THE WITNESS: That's never been offered as an  
10 option in any of the numerous search warrants that I've  
11 conducted, it would not even have been considered. The  
12 only reason it was considered in this case was because  
13 we knew who Tom was.  
14 BY MR. GOSMAN:  
15 Q. And you knew you could trust Tom to assist  
16 you in a professional manner, correct?  
17 MR. THOMPSON: Object as to form.  
18 MS. WESTBY: Join.  
19 THE WITNESS: We didn't want to put Tom in a  
20 bad position. And we didn't want to show any kind of  
21 preferential treatment.  
22 MR. GOSMAN: I'm going to take a minute. If  
23 you'd like to take a break, go ahead. I'm going to  
24 look for something here for a few minutes.  
25 (Recess taken 4:21 to 4:27)

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1 p.m., October 5, 2010)  
2 BY MR. GOSMAN:  
3 Q. Let's look at Exhibit 16 for a moment. There  
4 is a reference to armor-piercing ammunition?  
5 A. Uh-huh.  
6 Q. Where did that information come from?  
7 A. It would have come from Miner.  
8 Q. And that would have been information that  
9 would have come from the confidential informant?  
10 A. Yes.  
11 Q. Is the presence of armor piercing ammunition  
12 significant?  
13 MR. THOMPSON: Object as to form. Vague.  
14 MS. WESTBY: Same.  
15 THE WITNESS: It could be.  
16 BY MR. GOSMAN:  
17 Q. Okay.  
18 A. It could show certain intent. That's all I  
19 got.  
20 Q. All right. With respect to armor-piercing  
21 ammunition, do you understand it was armor-piercing  
22 ammunition or was it just a hard jacketed ammunition?  
23 A. You know, I didn't know. I wrote it down in  
24 quotation marks because I think a lot of people call  
25 things one thing -- that's their impression of it. I

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1 think people probably think that we carry  
2 armor-piercing ammunition. Armor-piercing ammunition,  
3 I think, is pretty rare in pistols. It's not that  
4 uncommon to find it for rifles, though.  
5 Q. So is it fair to say that you -- when you  
6 heard this phrase, you weren't sure whether it was true  
7 armor-piercing ammunition or not? Or, whether the  
8 person who spoke of it was -- knew what he was talking  
9 about?  
10 MS. WESTBY: Object to the form of the  
11 question.  
12 THE WITNESS: I took it as meaning he had  
13 some kind of special ammunition. What exactly it was,  
14 don't know. We were told it was armor-piercing.  
15 (Exhibits I3, I4, and I5  
16 identified)  
17 BY MR. GOSMAN:  
18 Q. Let's go ahead and take a look at  
19 Exhibits I3, I4, and I5. And those are the affidavits  
20 of Officer Miner that reference his discussions with  
21 the confidential informant.  
22 And I want you to let me know if you find any  
23 reference to armor-piercing information in those  
24 affidavits.  
25 A. Armor-piercing information?

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1 Q. I'm sorry. Armor-piercing ammunition.  
2 A. Okay.  
3 Q. It might help for you to know that there is a  
4 portion of those affidavits that deal specifically with  
5 discussions of the confidential informant and there are  
6 portions of the affidavit that don't. And I'm just  
7 interested in the information that Officer Miner  
8 supplied to the Court regarding the confidential  
9 informant. And whether there was reference to  
10 armor-piercing ammunition.  
11 MS. WESTBY: I'm going to object to the form.  
12 THE WITNESS: I didn't see any reference to  
13 armor-piercing ammunition in the affidavits.  
14 BY MR. GOSMAN:  
15 Q. When you arrived at the residence of the  
16 Wachsmuth's, did you arrive in more than one vehicle?  
17 A. Yes.  
18 Q. How many vehicles were involved?  
19 A. I don't know. We don't have, like, a van or  
20 anything that could house a bunch of officers. So we  
21 would have wanted to take as few cars as we could. But  
22 we would have had to take several.  
23 Q. Okay. Who was with you in your car?  
24 A. I don't remember. I don't remember if anyone  
25 was with me in my car.

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1 Q. Did you conduct any intelligence,  
2 surveillance at the home before -- after you arrived at  
3 the house, but before you conducted the entry?  
4 A. No.  
5 Q. Did you notice whether or not Bret  
6 Wachsmuth's vehicle was at the house?  
7 A. I don't remember which vehicles were in the  
8 driveway.  
9 Q. Did you know or have information about the  
10 identity of Bret Wachsmuth's vehicle?  
11 A. I knew that he had an SUV.  
12 Q. Okay. It's actually described in Officer  
13 Miner's affidavit for search warrant, is it not?  
14 A. He -- from what I recall just reading, he  
15 described three vehicles: A Cadillac, an SUV, and a  
16 truck.  
17 Q. He also has the license plate numbers on the  
18 vehicles, correct?  
19 A. Yes.  
20 Q. And you had that information before you went  
21 to the Wachsmuth home, correct, about the vehicles that  
22 were owned by the parties?  
23 A. I believe so. I don't remember specifically.  
24 Q. If you had known that Bret Wachsmuth was not  
25 home, would you have deployed the dynamic entry tactics

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1 that were used that night?  
2 MR. THOMPSON: Objection as to form.  
3 MS. WESTBY: Join.  
4 THE WITNESS: It wasn't who was home that  
5 determined what tactics were used so much as their  
6 actions.  
7 BY MR. GOSMAN:  
8 Q. Whose actions?  
9 A. Whoever was home.  
10 Q. So in other words, it didn't make any  
11 difference whether Bret Wachsmuth was even home in  
12 terms of whether you were going to go forward with a  
13 dynamic entry in that house?  
14 A. I didn't say that.  
15 MS. WESTBY: Object to the form.  
16 BY MR. GOSMAN:  
17 Q. Well, what are you saying, Officer?  
18 MS. WESTBY: Object to the form.  
19 MR. THOMPSON: Join.  
20 THE WITNESS: I'm saying it was up to the  
21 occupants of the house. They determined the amount of  
22 force we used. Had they opened the door immediately,  
23 we wouldn't have forced it. Wouldn't have broken  
24 windows.  
25

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1 BY MR. GOSMAN:  
2 Q. And they didn't open the door immediately,  
3 did they?  
4 A. They did not.  
5 Q. I think, then, what you've said, is that it  
6 didn't matter whether Bret Wachsmuth was home or not  
7 that night?  
8 MS. WESTBY: Object to the form of the  
9 question.  
10 MR. THOMPSON: Join.  
11 THE WITNESS: I didn't know whether Bret  
12 Wachsmuth was home or not that night.  
13 BY MR. GOSMAN:  
14 Q. Fair enough.  
15 My question was: It didn't matter to you  
16 whether Mr. Wachsmuth was home that night or not in  
17 terms of going forward with your form?  
18 MS. WESTBY: Object to the form.  
19 MR. THOMPSON: Join.  
20 THE WITNESS: I wouldn't say that it didn't  
21 matter.  
22 BY MR. GOSMAN:  
23 Q. Well, if it did matter, how did it matter?  
24 MR. THOMPSON: Object as to form.  
25 MS. WESTBY: Join.

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1 THE WITNESS: I thought he was home. I  
2 don't -- I don't know where you're going.  
3 BY MR. GOSMAN:  
4 Q. Even though his vehicle wasn't there?  
5 MS. WESTBY: Object to the form.  
6 MR. THOMPSON: Join.  
7 THE WITNESS: I didn't know who drove his  
8 vehicle.  
9 BY MR. GOSMAN:  
10 Q. Well --  
11 A. Again, there were three vehicles listed. I  
12 didn't know who drove which one. I had never had  
13 contact with either one of these individuals.  
14 Q. I think you said that you knew that he drove  
15 the dark SUV.  
16 MR. THOMPSON: Objection as to form.  
17 Misstates his testimony.  
18 THE WITNESS: I said I knew he had an SUV.  
19 BY MR. GOSMAN:  
20 Q. And that SUV was not in front of the house  
21 that night, was it?  
22 A. I don't remember, again, which vehicles were  
23 or were not in the driveway. I still don't remember  
24 which vehicles were in the driveway.  
25 Q. Was that something that you considered

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1 important?  
2 A. Something that I considered --  
3 Q. What vehicles were in or around the house?  
4 MS. WESTBY: Object to the form.  
5 THE WITNESS: It's a piece of intelligence.  
6 It's certainly something that I would try to consider.  
7 (Exhibit 33 identified)  
8 BY MR. GOSMAN:  
9 Q. Let's have you go ahead and turn to  
10 Exhibit 33.  
11 A. Okay.  
12 Q. Okay. Do you see that this is an answer  
13 filed by the City of Powell and all other named  
14 defendants in their official capacities?  
15 A. Yes.  
16 Q. Did you speak with Mr. Thompson at all, prior  
17 to the time an answer was filed in your case?  
18 A. Yes.  
19 Q. And you provided him information relative to  
20 what happened that night?  
21 MR. THOMPSON: Object as to form. I'm going  
22 to direct you not to answer.  
23 MR. GOSMAN: Fair enough.  
24 BY MR. GOSMAN:  
25 Q. Let's go ahead and turn to Page 8,

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1 Paragraph 36. And I want you to read that paragraph  
2 into the record.  
3 MS. WESTBY: Which paragraph?  
4 THE WITNESS: Thirty-six.  
5 MS. WESTBY: Okay.  
6 THE WITNESS: "In response to Paragraph 36 of  
7 the Plaintiff's Complaint, Defendants admit that a  
8 primary team consisting of six officers, and five with  
9 long guns were to announce, 'police, search warrant'  
10 and if the door did not open immediately, the ram was  
11 to be used for entry. Defendants deny the remainder of  
12 the paragraph."  
13 BY MR. GOSMAN:  
14 Q. Okay. And then I want you to go to  
15 Exhibit I6. And I want you to look again at the first  
16 sentence of the paragraph that begins, "the plan was to  
17 knock on the front door."  
18 A. Okay.  
19 Q. And would you agree with me that the  
20 statement in Exhibit 16 that you've just looked at is  
21 consistent with Paragraph 36 of the answer to the  
22 Plaintiff's Complaint?  
23 MS. WESTBY: Object to the form of the  
24 question. The answer is prepared by the attorneys,  
25 probably in large part based on the report. So we're

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1 not -- I'm not going to have him testifying about  
2 what's in the answer.  
3 MR. GOSMAN: I'm asking him if those two  
4 statements are consistent.  
5 MS. WESTBY: And I'm not going to have him  
6 testifying about what's in the answer.  
7 MR. GOSMAN: You're not?  
8 MS. WESTBY: I'm not.  
9 MR. GOSMAN: Well, then we're going to have  
10 to call the Magistrate.  
11 MS. WESTBY: Okay.  
12 MR. GOSMAN: You're refusing to allow him to  
13 answer questions about the answer that was filed in  
14 this case.  
15 MS. WESTBY: I'm not going to have him  
16 testifying about what the attorneys put in the answer,  
17 whether or not it's consistent with what his report  
18 says. No, I'm not.  
19 MR. GOSMAN: All right. Then we're going to  
20 have to call the Magistrate. Do we have another phone  
21 here that we can use?  
22 MS. WESTBY: Before we do that. If we're  
23 going to go to the Magistrate, I want to get a group of  
24 your questions.  
25 MR. GOSMAN: You can do that any other time

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1 you want. This deposition can't go forward until we  
2 get that question answered.  
3 MS. WESTBY: Absolutely not. We're going to  
4 do this at the same time.  
5 MR. GOSMAN: I'm telling you what, I'm going  
6 to call the Magistrate and we're going to discuss the  
7 question, which is presently in front of us, and that's  
8 whether or not this witness will be permitted to  
9 testify about the answer that his lawyers filed.  
10 MS. WESTBY: Is this really how you want to  
11 handle this situation?  
12 MR. GOSMAN: No, I'd just assume that you  
13 allow this witness to talk about the answer that his  
14 lawyers filed for him. It's a pleading. It's answered  
15 on his behalf. There's no reason why he cannot answer  
16 that question.  
17 MR. THOMPSON: Well, the pleading is filed,  
18 first of all, on behalf of all of the defendants named  
19 in the lawsuit.  
20 MR. GOSMAN: I know what a pleading is, Tom.  
21 MR. THOMPSON: Well, then --  
22 MR. GOSMAN: How many times have you used a  
23 complaint to visit with a plaintiff about the actions  
24 that they brought in a lawsuit?  
25 MR. THOMPSON: I've done that before and

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1 usually met with objection from counsel.  
2 MR. GOSMAN: Okay. Well --  
3 MR. THOMPSON: To be honest with you.  
4 MR. GOSMAN: Did somebody tell you that they  
5 would not allow their party to answer questions  
6 regarding their own pleading?  
7 MR. THOMPSON: You know, I don't know.  
8 MS. WESTBY: Here's the deal: How long is  
9 this going? Are you going to continue to go through  
10 our pleadings that were prepared by the attorneys in  
11 this case and ask him questions about it, or is this  
12 one time and you're just going to ask him if it's  
13 consistent with what his report says?  
14 MR. GOSMAN: There aren't very many. There's  
15 two or three.  
16 MR. THOMPSON: And by the way, Counsel,  
17 you've got about 25 minutes before the deposition is  
18 shut down. You've got seven hours under the rules.  
19 MR. GOSMAN: Okay. Well, that doesn't  
20 include what it's going to take to take care of this  
21 call.  
22 I'm happy to go forward if you'll allow just  
23 several questions on this issue.  
24 MR. THOMPSON: We'll go off.  
25 MR. GOSMAN: It's okay.

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1 (Discussion held off the  
2 record.)  
3 BY MR. GOSMAN:  
4 Q. You've had a chance to look at Paragraph 36  
5 of the answer that your attorneys filed in this case.  
6 MS. WESTBY: And I'm going to have to -- I  
7 don't know. It's filed for the City and defendants in  
8 their official capacity. If you will, please be  
9 specific about which document you're referring to.  
10 MR. GOSMAN: I can do that.  
11 BY MR. GOSMAN:  
12 Q. Let's start over with the question. You've  
13 had a chance to look at Paragraph 36 of the answer of  
14 the defendant, City of Powell, and all other named  
15 defendants in their official capacities. Which  
16 includes your name, does it not? And that would be on  
17 Page 1 of 36?  
18 A. It's misspelled, but yes.  
19 Q. All right. Now, you've also had a chance to  
20 look at Exhibit 16, which was the report you filed in  
21 this matter. And specifically, the statement: "The  
22 plan was to knock on the front door and announce  
23 'police, search warrant'. If the door did not open  
24 immediately, we would use the ram to force entry."  
25 Is that statement in your report consistent

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1 with the answer that was filed in this case, Exhibit  
2 No. 33?  
3 MS. WESTBY: Object.  
4 MR. THOMPSON: Objection as to form. And I'd  
5 note, Counsel, that this is responsive to a  
6 Paragraph 36 of the complaint, which we don't have in  
7 front of us. And the witness isn't able to review and  
8 able to provide an answer to.  
9 MR. GOSMAN: All right. Thirty-six, we do  
10 have that. It's -- as a matter of fact, at the end of  
11 the exhibit, we have Plaintiff's Complaint. So if  
12 you'd like to take another minute and look at the  
13 paragraph that is referenced in the answer given in  
14 Paragraph 36, please do so.  
15 MR. THOMPSON: Go ahead, if you can.  
16 THE WITNESS: I think I know what the  
17 question is, but just to clarify, the information in  
18 the answer is substantially the same as the information  
19 that is in my report.  
20 BY MR. GOSMAN:  
21 Q. All right. And you knew that, correct?  
22 MS. WESTBY: Object to the form --  
23 BY MR. GOSMAN:  
24 Q. Did you know that at the time the answer was  
25 filed?

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1 MS. WESTBY: Know what?  
2 BY MR. GOSMAN:  
3 Q. That the information -- that you gave -- that  
4 the information contained in the answer would be  
5 consistent with the information you gave in your  
6 reports?  
7 MS. WESTBY: Object to the form of the  
8 question. You're getting into the attorney-client  
9 privilege. You're asking about what we put in the  
10 answer. And our discussion with him about what is in  
11 the answer. You can't get into that.  
12 MR. GOSMAN: I'm simply responding to  
13 information that he gave me.  
14 MS. WESTBY: And again...  
15 THE WITNESS: I just answered the question  
16 that -- you asked if they were the same, and I said  
17 that they are substantially the same.  
18 BY MR. GOSMAN:  
19 Q. And the reason for that you said --  
20 A. I didn't say.  
21 Q. All right. Is the reason for that because  
22 the information was contained in the report?  
23 MR. THOMPSON: Object. He's not going to  
24 answer that question.  
25 MS. WESTBY: Object.

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1 MR. GOSMAN: All right. I think he did  
2 volunteer that information. That's fine, though. I  
3 agree.  
4 BY MR. GOSMAN:  
5 Q. Is that information incorrect?  
6 MR. THOMPSON: Which information?  
7 MR. GOSMAN: The information contained in  
8 Paragraph 36 of the answer.  
9 THE WITNESS: To the same extent that I would  
10 say that the report is not accurate.  
11 BY MR. GOSMAN:  
12 Q. Did you -- when did you first discover that  
13 the report was not accurate?  
14 A. Probably after we received notice that we  
15 were being sued was probably the first time I'd looked  
16 at it since I wrote it.  
17 Q. And that would have been before this answer  
18 was filed, correct?  
19 A. Probably.  
20 Q. Did you make any effort to correct that  
21 mistake before the answer was filed?  
22 MS. WESTBY: Object to the form of the  
23 question. That's attorney-client privilege.  
24 MR. GOSMAN: No.  
25 MS. WESTBY: Yes. We prepared the answer.

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1 Any communication that he had with us about the answer  
2 is attorney-client privilege.  
3 MR. GOSMAN: I'm not talking about  
4 communication. I'm saying did he make any effort to  
5 correct the mistake.  
6 MS. WESTBY: Who would he have had to call to  
7 correct that mistake? His attorneys. We were the ones  
8 to prepare the answer.  
9 MR. GOSMAN: It's not attorney-client  
10 information.  
11 MS. WESTBY: It is attorney-client  
12 communication. Absolutely.  
13 THE WITNESS: You want me to answer?  
14 MS. WESTBY: No.  
15 MR. GOSMAN: Yes.  
16 MS. WESTBY: No. It's attorney-client  
17 privilege.  
18 BY MR. GOSMAN:  
19 Q. All right. You were aware that there was a  
20 mistake in your report prior to the time that the  
21 attorneys answered the complaint?  
22 MR. THOMPSON: Objection as to form.  
23 BY MR. GOSMAN:  
24 Q. Filed the answer. I'm sorry. It's well  
25 taken.

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1 A. With the verbiage, yes.  
2 Q. All right. Now, I don't want to know what  
3 you said to your attorneys. But did you undertake any  
4 effort to correct that mistake?  
5 MS. WESTBY: Object to the form of the  
6 question.  
7 BY MR. GOSMAN:  
8 Q. Prior to the time the answer was filed?  
9 MS. WESTBY: Object. It's attorney-client  
10 privilege. Instruct him not to answer.  
11 You're asking him if he made any effort to  
12 correct our answer to his -- to the complaint.  
13 MR. GOSMAN: I an.. And I certainly can ask  
14 him that question.  
15 MR. THOMPSON: No. No, you can't. Because  
16 it's communication. She's exactly -- Misha is exactly  
17 right. How would he correct? Would he get on PACER  
18 and do an interlineation?  
19 MR. GOSMAN: No. No. No. I think we all  
20 know what I mean here.  
21 MR. THOMPSON: Yeah.  
22 MR. GOSMAN: Did he make any effort to  
23 correct that information before it went into the  
24 answer.  
25 MR. THOMPSON: Counsel, we can get the

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1 Magistrate on the phone now, if you like, but he is not  
2 going to answer any questions about communication with  
3 me. Absolutely not.  
4 MR. GOSMAN: All right. Let's get him on the  
5 phone.  
6 MR. THOMPSON: Call him.  
7 THE COURT REPORTER: Am I off the record?  
8 MR. GOSMAN: Yes you're off the record.  
9 (Recess taken 4:57 to 5:02  
10 p.m., October 5, 2010)  
11 MS. WESTBY: That is a yes or no.  
12 BY MR. GOSMAN:  
13 Q. What effort did you make -- I'm sorry.  
14 Did you make an effort to correct the mistake  
15 that you discovered in your report after the action had  
16 been filed, but before the answer had been filed?  
17 MS. WESTBY: Or -- I don't know. But don't  
18 provide additional informat on.  
19 THE WITNESS: I understand.  
20 No.  
21 BY MR. GOSMAN:  
22 Q. Thank you. We are so close.  
23 The distraction device was thrown in the  
24 window in order to protect the child?  
25 A. No.

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1 Q. It was thrown in the window why?  
2 A. It wasn't thrown.  
3 Q. Dropped and placed in the window.  
4 A. For a number of reasons. One of which was to  
5 cause a distraction as it is a distraction device.  
6 Q. One of which was -- go ahead.  
7 The other reasons being?  
8 A. As we understood it, there were numerous  
9 firearms kept in that particular room.  
10 MR. THOMPSON: Counsel, he's already answered  
11 all of this.  
12 MR. GOSMAN: Well, he has answered that.  
13 BY MR. GOSMAN:  
14 Q. All right. It was basically to create a  
15 distraction because of the threat that you felt to  
16 officer safety, correct?  
17 A. That was one of the reasons, yes.  
18 Q. One of the reasons. Now, this will go a lot  
19 faster if you can just tie it up for me.  
20 What other reasons were there for deploying a  
21 distraction device in that house?  
22 MS. WESTBY: Object to the form. Asked and  
23 answered.  
24 THE WITNESS: Like I said before, in addition  
25 to just a distraction, to deny that room to someone who

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1 could potentially be going into it for weapons.  
2 One other reason was we did not believe there  
3 was a child in the house, which there was not, that  
4 they would be in Bret and Tricia's bedroom.  
5 BY MR. GOSMAN:  
6 Q. Okay. Is there any evidence that that issue  
7 was ever discussed by anybody in the record that we  
8 have here -- the reports?  
9 MR. THOMPSON: Objection as to form.  
10 MS. WESTBY: Join.  
11 MR. THOMPSON: I want you to look through all  
12 457 pages --  
13 BY MR. GOSMAN:  
14 Q. You've got Exhibit 16 in front of you.  
15 There's no reference to deployment of the flashbang  
16 device in that bedroom upon the belief that the child  
17 would not have been in that room, correct?  
18 A. I didn't make any reference to any of the  
19 other reasons either.  
20 Q. All right. And there's no reference in  
21 Exhibit 10, which we have been talking about quite a  
22 bit today as well?  
23 A. What Exhibit 16 says is based on the  
24 information received and my knowledge, training, and  
25 experience on numerous narcotics search warrants. 1

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1 decided to take extra precautions to minimize the  
2 chance of someone getting hurt. Someone would include  
3 a child.  
4 Those extra precautions included planning  
5 multiple breaches, simultaneously using as many  
6 officers as I had available. And introducing the noise  
7 flash distraction device or flashbang.  
8 Q. All right. Did you participate in any of the  
9 interviews with the Wachsmuth's?  
10 A. No. I was present at both locations, but I  
11 didn't interview either one.  
12 Q. And do you know whether Bret Wachsmuth was  
13 armed when he was found?  
14 A. He did not have a firearm.  
15 Q. Did he put up any resistance?  
16 A. No.  
17 Q. Did you really expect he would?  
18 MR. THOMPSON: Objection as to form.  
19 MS. WESTBY: Join  
20 THE WITNESS: I'll tell you, I was a little  
21 anxious.  
22 BY MR. GOSMAN:  
23 Q. Well, of course you're a little anxious any  
24 time you're involved in an operation like that, aren't  
25 you? I mean, you just broke in his house --

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1 MR. THOMPSON: I won't object.  
2 BY MR. GOSMAN:  
3 Q. -- with five police officers at least.  
4 Oh, let me ask this question: Did you know  
5 that you'd started a fire in the bedroom?  
6 A. We didn't.  
7 Q. You didn't know that?  
8 A. We didn't start a fire.  
9 Q. Did you know the flashbang device started a  
10 fire?  
11 A. The flashbang device didn't start a fire.  
12 Q. Pardon?  
13 A. The flashbang device did not start a fire  
14 either.  
15 Q. What started the fire in the bedroom?  
16 A. There was no fire in the bedroom.  
17 Q. There was no fire in the bedroom?  
18 A. That's exactly what I just said.  
19 Q. All right. That's fine. Did you notice any  
20 smoke in the house?  
21 A. There was some smoke associated with the  
22 flashbang.  
23 Q. Did the smoke alarm go off?  
24 A. I don't recall.  
25 Q. Have you seen the photographs that the

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1 Wachsmuth's provided where there was a -- it was of the  
2 interior of the house and there was a picture of the  
3 pillow that had been burned out and bedding that had  
4 been burned out?  
5 MS. WESTBY: Object --  
6 BY MR. GOSMAN:  
7 Q. Have you seen those, that's all I want to  
8 know?  
9 MS. WESTBY: I'm going to object to the form  
10 of the question. It misstates the evidence.  
11 THE WITNESS: I think the only pictures I'm  
12 familiar with would be the ones that were attached to  
13 the case, the ones we would have taken.  
14 BY MR. GOSMAN:  
15 Q. Did you know that the bed was located  
16 directly under the window where the flashbang device  
17 was dropped?  
18 MS. WESTBY: Object to the form of the  
19 question.  
20 MR. THOMPSON: Join.  
21 THE WITNESS: Not before we did the search  
22 warrant.  
23 BY MR. GOSMAN:  
24 Q. Did you learn that afterwards?  
25 A. I did.

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1 Q. Do you have an e-mail address by which you  
2 have communicated with any of the other police officers  
3 in this case about this occasion?  
4 A. Yes.  
5 Q. What is that e-mail address?  
6 A. Mchretien@cityofpowell.com. I even got a  
7 special folder for it.  
8 Q. Okay. And have you produced all of that  
9 e-mail to your attorneys, other than the e-mail that  
10 would be directed to the attorneys?  
11 A. All of the e-mails prior to the lawsuit would  
12 have gone to the attorneys. Anything since then, like  
13 I said, I've kept it in a special folder so that if  
14 somebody needs to look at it, they can.  
15 Q. Okay.  
16 A. But every time there's an e-mail, I don't  
17 send it. It usually just deals with when something is  
18 going to occur or something.  
19 (Exhibit 36 identified)  
20 MR. GOSMAN:  
21 Q. Go ahead and take a look at Exhibit 36 for a  
22 second. Oh, you can't do that. All right.  
23 MR. THOMPSON: I'm trying to get it to 36.  
24 MR. GOSMAN: Sure.  
25 MR. THOMPSON: There's two exhibits marked

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1 35, Counsel.

2 MR. GOSMAN: Yes there are. I'm looking for

3 the e-mail. I think it's the first one. It's that

4 one. I've got to get that pulled out of there.

5 THE WITNESS: This e-mail?

6 BY MR. GOSMAN:

7 Q. Yes. There's group of e-mail. I'd like you

8 to look through there and see -- I don't see anything

9 with your name on it. And I'll represent to you that

10 this was the e-mail that was provided by counsel in

11 response to my request for all e-mail.

12 A. There's one sent to me from Al Kent. Do you

13 want me to read it?

14 Q. Which one is it? Go ahead. It's short.

15 A. "Mike, could you make sure that Chapman

16 writes his evidence report for Miner's 09-223" --

17 Q. Okay.

18 A. -- "job assignments, what was found and

19 where. I asked him to Saturday, and it didn't get

20 done. Miner has to have the report to the county

21 attorney first thing Monday morning. Alan."

22 Q. All right.

23 A. Okay. That was the only one that I saw.

24 Q. All right. And were there other e-mail that

25 you sent back and forth in connection with this case?

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1 A. I think that was the only one from Alan. I

2 would have just responded okay.

3 Q. You got another folder now that has

4 additional e-mail in it?

5 MR. THOMPSON: Since the lawsuit started.

6 THE WITNESS: Since the lawsuit started.

7 BY MR. GOSMAN:

8 Q. Since the lawsuit star ed.

9 A. It would have been instructions from Tim or

10 the attorneys.

11 MR. THOMPSON: And there's an objection,

12 Counsel, on the record, as to e-mails that are subject

13 to the attorney-client privilege or --

14 MR. GOSMAN: I understand that. Certainly.

15 BY MR. GOSMAN:

16 Q. But I take it that some of these e-mails are

17 not directed to your attorney. They are directed to

18 the other officers in this folder?

19 A. I'm sure.

20 MR. GOSMAN: I'm going to ask for them. I

21 think I've already asked for them. And you can review

22 them and decide what you're going to do with them. But

23 I'm going to ask that you supply those to your counsel

24 as part of something -- I've already previously

25 requested.

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1 MS. WESTBY: And that's fine. We'll update

2 it if it's something that you're entitled to.

3 MR. GOSMAN: Okay. Very good. I don't

4 believe I have any other questions, Officer. Thank you

5 very much. Appreciate your time.

6 MS. WESTBY: Okay. We'll read and sign.

7 (Proceedings concluded at 5:14

8 p.m., October 5, 2010.)

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1 **DEPONENT'S CERTIFICATE**

2 I, Mike Chretien, do hereby certify, under

3 penalty of perjury, that I have read the foregoing

4 transcript of my testimony consisting of 251 pages,

5 taken on October 5, 2010 and that the same is, with any

6 changes noted below, a full, true and correct record of

7 my deposition.

8	PAGE	LINE	CORRECTION	REASON FOR CORRECTION
9	---	---	---	---
10	---	---	---	---
11	---	---	---	---
12	---	---	---	---
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Mike Chretien Date

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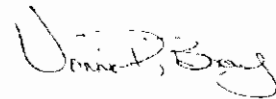
CERTIFICATE

I, VONNI R. BRAY, Registered Professional  
Reporter, and Notary Public for the State of Montana,  
do hereby certify that MIKE CHRETIEN was by me first  
duly sworn to testify to the truth, the whole truth,  
and nothing but the truth;

That the foregoing transcript, consisting of  
252 pages, is a true record of the testimony given by  
said deponent, together with all other proceedings  
herein contained.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 19th day of October, 2009.

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<b>0</b>			<b>5</b>	<b>A</b>
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Mike Chretien  
October 05, 2010

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## POWELL POLICE DEPARTMENT

250 N. CLARK ST POWELL, WY 82435 307-754-22

SUPPLEMENT 7

WACHSMUTH V. CITY OF  
POWELL- CV 10-041J

PLAINTIFF'S EXHIBIT

#

16

**INVESTIGATION CONTINUED: SGT M.G. Chretien**

On 02/24/2009 I was informed by SGT Kent that we would be serving a narcotics search warrant on Bret Wachsmuth's residence. I was tasked with organizing the initial entry into the residence and securing the scene for evidence collection. I received a briefing from SGT Kent and Officer Miner detailing the layout of the house and the information provided by the informant pertaining to Bret Wachsmuth. Particularly that Bret was paranoid and was a "peeper", meaning that he was always looking out his windows; especially when the dog barked.

I was told that Bret was on several medications, was mentally unstable, kept firearms in the living room and the north east bedroom, and carried a firearm on his person. I was also told that he had "armor piercing" ammunition. According to the informant, Bret was growing marijuana in his basement. The informant also said that his wife was receiving prescription medication through the mail, from her mother. This medication was supposedly placed inside of a rubber glove, which was then placed inside of stuffed animals. We did not know the extent of the grow operation.

Officer Blackmore had been watching the residence at 870 E North Street, while we planned the operation. While he was there, he reported seeing a suburban type vehicle pull into the driveway and a male adult and male child exit and enter the house. We did not know who else was at the house. Before we left the station he said that an adult male had left the house in the car, but he did not see a passenger.

Based on the information received, and my knowledge, training, and experience on numerous narcotics search warrants, I decided to take extra precautions to minimize the chance of someone getting hurt. Those extra precautions included planning multiple breaches simultaneously, using as many officers as I had available, and introducing a Noise Flash Distraction Device (NFDD), or "flashbang".

The plan was for three officers to approach the back door via a wooden privacy fence in the back yard. Their purpose was to secure the back door and create a distraction by breaking a window in either the south east bedroom, or the back door itself.

Another officer, along with Officer Blackmore, would secure the detached garage from outside the fence. The fence connected the house to the garage, and we did not know where a gate was located.

Six officers would form the primary entry team. One officer would carry the ram, the rest were equipped with long guns. Two other officers would form a distraction team and follow the entry team in to secure prisoners, and would be armed with pistols. One of these two would carry the window rake, the other the NFDD.

The plan was to knock on the front door and announce "police, search warrant". If the door did not open immediately, we would use the ram to force entry. The primary entry team's responsibility was to secure the residence and ensure the safety of everyone involved. The follow on officers would secure prisoners. Once everyone was secure and the residence checked for threats, the evidence team would take over. We planned to immediately remove any occupants to the police station for interviews.

As officers arrived and approached the house, the dog started to bark out the front living room window. Officer Chapman knocked on the front door and announced "police search warrant". When the door did not open, Officer Miner forced it open with the ram. The back yard team of officers were not in position when this happened, so they secured the back yard and door area by sight initially, and no windows or doors were broken on the back of the residence. As the door was being rammed, SGT Kent used the window rake to break and rake the window to the north east bedroom. Officer McCaslin then checked the area immediately inside the window for people or obstacles, and deployed the NFDD.

As the entry team entered the living room we encountered a white female sitting on the couch. Officers cleared the living room, kitchen, bedrooms, bathroom, and basement without encountering anyone else. There were several guns in the north east bedroom. While officers were clearing the

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P06 CHRETIEN, MICHAEL

Date:

3/2/2009

Approved By:

P01 FEATHERS, TIM

Date:

4/6/2009

00026


**POWELL POLICE DEPARTMENT**

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250 N. CLARK ST POWELL, WY 82435 307-754-2212

SUPPLEMENT 7

09-223

house, the family dog ran out the front door. We were unable to find the dog. We discovered that Bret was at his dad's house, located outside of the city limits of Powell. There were two marijuana plants growing under the stairs to the basement. Assitant County Attorney Jonathon Davis instructed us to take him into custody. Officer Danzer, SGT Eckerdt, and I went to the residence and informed his dad that we had just served a search warrant on Bret's house, and that we were there to arrest Bret.

Officer Danzer and SGT Eckerdt took Bret into custody and transported him to the station. I stayed at the residence until Officers Danzer and Bradley returned to inventory Brett's vehicle, which was named in the search warrant, and parked at his dad's house. I assisted Danzer and Bradley with the search, and then gave the keys to Bret's dad.

**EVIDENCE:**

None.

**UNDEVELOPED LEADS:**

None.

**ATTACHMENTS:**

None.

**STATUS:**

Closed.

**VICTIM/WITNESS FOLLOW UP:**

None.

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4/6/2009

00027